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P.C. Martin
TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 363 *1*

**EDWARD HINES YELLOW PINE TRUSTEES,
PETITIONERS,**

vs.

**ANNA F. C. MARTIN, F. C. MARTIN, H. P. LEWIS, AND
GEORGE LAWRENCE**

**ON A WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

WRITING FOR CERTIORARI FILED APRIL 19, 1934

CERTIORARI GRANTED MAY 12, 1934

(80,361)

112 Mass 819

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(30,281)

SUPREME COURT OF THE UNITED STATES

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PETITIONERS,

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ANNA F. C. MARTIN, F. C. MARTIN, H. P. LEWIS, AND
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ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[fol. 1]

Caption—omitted

**IN DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DIVISION OF THE SOUTHERN DISTRICT OF
THE STATE OF MISSISSIPPI.**

EDWARD HINES YELLOW PINE TRUSTEES

versus

ANNA F. C. MARTIN

BILL OF COMPLAINT AGAINST ANNA F. C. MARTIN

Comes Edwin Hines Yellow Pine Trustees composed of Edward Hines, C. S. Wiehe and L. L. Barth, Trustees under trust agreement [fol. 2] of January 1, 1918, and executing said trust estate under the name of Edward Hines Yellow Pine Trustees, and exhibit their bill of complaint against Anna F. C. Martin, a resident of Pass Christian, Mississippi, and would respectfully show unto the Court that the complainants are residents and citizens of the State of Illinois, and that the defendant herein is a resident citizen of the State of Mississippi, with a post office address at Pass Christian, said State of Mississippi.

Complainants would further show unto the Court that they are the real, true, legal and equitable owners of the following described lands now situated in the County of Pearl River, formerly Marion County, State of Mississippi, to-wit: NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 36, T. 2 South R. 15 West, situated in said county. Complainants would show that the value of the said land, the subject of this litigation, and out of which this controversy arises, is in excess of three thousand dollars.

Complainants deraign title to the above described lands as follows:

a. By Act of Congress approved September 28th, 1850, 1850, the said lands — donated to the State of Mississippi; thereafter, in accordance with an Act of the Legislature of the State of Mississippi, approved on the 8th day of April, 1871, the said lands were patented to the Pearl River Improvement & Navigation Company, under date June 27th, 1871, said patent being found of record in Book G, pp. 418-428, Record of Deeds, Marion County, in which said lands were then situated, and in book 4, pp. 204-205, Record of Deeds, Pearl River County, State of Mississippi, where same are now located.

b. The said Pearl River Improvement & Navigation Company, for a valuable consideration, on November 20th, 1872, conveyed the [fol. 3] said lands to M. S. Baldwin, said deed being found of record in Book G, pp. 428-437, Record of Deeds, Marion County, and Book 4, pp. 215-225, Record of Deeds, Pearl River County.

c. That thereafter, and on the 17th day of April, 1873, the said M. S. Baldwin, by his attorney, in fact, Samuel Vose for a valuable consideration conveyed the said lands to Israel Hall by deed of

record Book 15, pp. 526 et seq., Record of Deeds, Pearl River County, and also recorded in Book 4, p. 242 said records.

d. Deraigning complainants' title further, they show unto the Court that on the 30th day of April, 1889, the said Israel Hall departed this life leaving a last will and testament which was duly probated in all respects as required by law, the same being found of record in the Record of Wills, County of Marion, State of Mississippi, Book —, pp. —, and in the Record — Wills, Pearl River County, State of Mississippi, Book 1, pp. 35 and 36, by which last will and testament his wife Olivia V. Hall, was named as his sole legatee.

4. Thereafter, on July 23, 1900, the said Olivia B. Hall by quit claim deed conveyed the said lands to Charlotte H. Eastman, the said deed being in conveyance of a theretofore executed but unrecorded deed from the said Israel Hall to Charlotte H. Eastman, wife of Sidney C. Eastman, said deed being executed about the year 1887, and the deed of conveyance from the said Olivia B. Hall to Charlotte H. Eastman being found of record in Book 12, pp. 222, Record of Deeds, Pearl River County, State of Mississippi.

[fol. 4] On May 13th, 1904, M. S. Baldwin executed and delivered unto the said Charlotte H. Eastman, a further deed to the said land, ratifying and confirming a previous deed executed by Samuel Vose, as attorney for the said Baldwin, in April 1873, and found of record in Book G, pp. 477-482, Land Records, Marion County, State of Mississippi: The deed of confirmation being recorded Book 14, p. 128, Record of Deeds Pearl River County, State of Mississippi.

g. Thereafter, and on July 5, 1905, for a valuable consideration the said Charlotte H. Eastman and Sidney C. Eastman by warranty deed conveyed the said lands to the Wyatt Lumber Company, by deed of record, Book 14, pp. 85-87, Records of Deeds, Pearl River County State of Mississippi.

h. Thereafter and on January 1, 1918, the said Wyatt Lumber Company conveyed the same to Edward Hines, C. F. Wiehe and L. L. Barth, Trustees of the Edward Hines Yellow Pine Trustees, a Trust Estate, by quit claim deed found of record in Book 25, pp. 259-261, Record of Deeds, Marion County, State of Mississippi. Reference to the above instruments and the records in which the same are recorded are prayed to be taken and considered as exhibits to this bill as if the same were copied herein.

Complainants are informed and believe, that the defendant herein is asserting some right — title in and to the said land by virtue of some claim alleged to have originated in a patent said to have been issued by the State of Mississippi therefor to one Mose Mitchell. That the said patent is claimed to have been issued by the State of Mississippi to the said Mitchell, December 7, 1883; and the said Mitchell [fol. 5] is alleged to have conveyed the said land to S. L. Woolridge on December 27, 1883; and the said Woolridge is alleged to have conveyed same to Eugene Martin, January 23, 1885; and the said Martin is alleged to have conveyed the same to J. G. Barrett, January, 23, 1885; and the said Barrett is alleged to have conveyed same to Hy. Clifton Rodes, July 21, 1888; and the said Rodes is alleged

to have conveyed same to the Southern Pine Company, August 6, 1889; and the said Southern Pine Company is alleged to have conveyed the said NE¼ of SE¼, 36-2-15 to the defendant Anna F. C. Martin, said conveyance as to the date of 26 day of July, 1909.

Complainants would further show unto the Court that the lands involved in this suit are a part of a large body of wild and timbered — granted by the State of Mississippi under the said Act of April 8, 1871, to the Pearl River Improvement & Navigation Company, and coming to complainants' predecessors in title from the same source and *thought* the same deraignment of title and concerning which there has been in years past litigation between complainants' predecessors in title and the predecessors in title of the defendant, who from time to time asserted a pretended title to said lands based upon the alleged patents of the State of Mississippi, issued years after the lawful patents through which complainants claim, as set out hereinabove.

Complainants would further show that the defendant asserts a pretended title coming to him through the Southern Pine Company, a corporation, and Eugene Martin, the source of which is an alleged patent issued by the State of Mississippi more than twelve years after the lawful and rightful patent through which complainants' claim was issued, all as set out hereinabove, and complainants would [fol. 6] further show that the said Southern Pine Company was at one time, and is now as far as the records show, a corporation under the laws of the State of Mississippi, domiciled in the City of Vicksburg, and that the President of the said corporation, and who likewise owned all, or practically, of the stock therein, *and* was the said Eugene Martin, who was the dominant power and who absolutely controlled the policies and actions of the said corporation, and — whose directions the various assertions and pretense of the title hereinabove referred to have been made.

Complainants would show unto the Court that in the year 1905 in a controversy litigated in the District Court of the United States for the Southern Division of the Southern District of Mississippi, between the said Southern Pine Company and Mrs. Olivia B. Hall, complainants' predecessor in title, and which the title and claims of said Mrs. Olivia B. Hall, and the pretended title of the Southern Pine Company, were as to lands and titles exactly similar to those under which the land here in controversy are held and claimed, the title of the said Mrs. Hall, complainants' predecessor, was upheld and declared to be legal and valid, the decision of the Circuit Court of Appeals for the Fifth Circuit and by the United States Supreme Court, as reported in 105 Fed. Rep., p. 84, 44 C. C. A., p. 363, and 180 U. S. p. 639. That notwithstanding this, thereafter the said Southern Pine Company continued to assert a claim or title to other lands similar as to title, among them being the four forties here in controversy, which lands, though exactly the same as to source and deraignment of title as those covered by the litigation hereinabove referred to, had, complainants are advised, through inadvertence or mistake been left out of the pleadings and decree in that cause and on the 29th day of September, 1910, the said Southern Pine Com-

[fol. 7] pany brought suit in the Chancery Court of Pearl River County, Mississippi, against the Wyatt Lumber Company, one of the defendant's predecessors in title, claiming title to the identical lands here involved, averring that they were the true and lawful owner thereof, and asserting their title from the same source and through the same chain of title as hereinabove set out.

Complainants would further show that the said suit was by the defendant therein immediately removed into the District Court of the United States for the Southern Division of the Southern District of Mississippi, whereupon the said Southern Pine Company dismissed its said suit and bill without prejudice, and at its own cost, as appears from the Minutes of said Court, and to which reference is here made.

Complainants would further show that thereafter on October 23, 1911, the defendant herein filed a suit as to the above described land against the Wyatt Lumber Company, complainants' predecessor in title, the said suit having been filed in the Chancery Court of Pearl River County, Mississippi, the purpose of which suit was an attack upon the title of the said Wyatt Lumber Company, and for the purpose of establishing the title of the defendants herein.

Your complainants would further show that upon the filing in the said Chancery Court of Pearl River County of the last mentioned suit that the defendant therein, the Wyatt Lumber Company, filed its petitions and bonds, all as required and conditioned by law, for the removal of the said suit to the United States District Court for the Southern Division of the Southern District of the State of Mississippi, and in which petitions it was charged that the said Southern Pine Company had been for years and was then resorting [fol. 8] to every possible device to avoid and evade the jurisdiction of the Federal Courts, and especially of the District Court of the United States for the Southern Division of the Southern District of Mississippi, and that, with that end in view the said Southern Pine Company, seeking to destroy the jurisdiction of the Federal Courts, and of the said District Court of the United States for the Southern Division of the Southern District of Mississippi, attempted fraudulently to pretend to convey its title to these lands, and in doing so to divide the same so that the amount held in each particular case, and conveyed to each particular vendee would be so small in value as to be below the jurisdiction of the said United States District Court, and therefore, and in pursuance of the said fraudulent plan and scheme to avoid the jurisdiction of the said States District Court, did, prior, to the institution of the suit and the filing of the bill in this case, pretend to convey the said lands away as follows, that is to say, did pretend to convey the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 36, T. 2 S. R. 15 West to Anna F. C. Martin, and did at the same time, and as petitioners are advised and believe on the same date, pretend to convey to F. C. Martin, a portion of the said lands, to-wit: SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, and did at the same time and as petitioners are advised and believe on the same date pretend and attempt to convey to Cecile Dowling, the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, and did at the

same time and as petitioners are advised and believe on the same date, pretend to convey to D. W. Blake the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 36, T. 2 S. R. 15 West, and the sole object of said pretended conveyances being to divide the said land so that the amount and holdings placed in the name of each particular vendee [fol. 9] should be worth less than the sum of \$3,000.00, and thereby attempt to defeat the removal of the said controversies into the said District Court of the United States for the Southern Division of the Southern District of Mississippi.

The said petitions further charged that the said pretended conveyances were, and are simulated and pretended conveyances, that they were not conveyances in fact and were never intended or designed to pass the title claimed by said vendor into the said vendee, the sole object being to place the title in said vendees, leaving the equitable title and the real control thereof still in the said Southern Pine Company, which corporation has since said pretended conveyances and with the knowledge and consent of said vendees continued to claim and assert title thereto, to attempt to exercise acts of ownership thereover and to sue to confirm its title thereto.

The said petitions further charged that none of the said vendees paid anything for the said conveyances, which were wholly voluntary, colorable and simulated, and that the said vendees and each of them held the naked legal title to said lands, that is to say, whatever title the said Southern Pine Company had and could convey, in trust for, and for the benefit and use of the said Southern Pine Company, who is the equitable and beneficial owner thereof.

It was further charged in the petitions that practically all of the stock of the said Southern Pine Company is owned by Eugene Martin, the President, who absolutely controls and dictates the policy and conduct of the said corporation; that F. C. Martin is the son of the said Eugene Martin; that Anna F. C. Martin is the wife of the said Eugene Martin; that W. D. Blake is the brother-in-law, [fol. 10] or other near relative of the said Eugene Martin, and that Cecile Dowling is either an employe or clerk of the said corporation, or is otherwise wholly under the control thereof, insofar as the holding of the said lands, the legal title to which was ostensibly placed in her, is concerned. And the said vendees, and each of them, hold the legal title to said lands in trust, for, and for the benefit of the said Southern Pine Company, which is the true, real and equitable owner of whatever claim may be set up and urged under the claim of title set up in complainant's bill, solely for the purpose of defeating the removal of this cause into the United States District Court, and for no other purpose, and as a trustee for the said Southern Pine Company.

Your complainants aver that thereafter each of the said units or causes of action was by the said Wyatt Lumber Company, its predecessor in title, by proper order of the Chancery Court of Pearl River County removed to the said United States District Court for the Southern Division of the Southern District of the State of Mississippi, and the record in each case was filed in the said District Court February 27, 1912; and that thereafter the several plaintiffs

[fol. 7] pany brought suit in the Chancery Court of Pearl River County, Mississippi, against the Wyatt Lumber Company, one of the defendant's predecessors in title, claiming title to the identical lands here involved, averring that they were the true and lawful owner thereof, and asserting their title from the same source and through the same chain of title as hereinabove set out.

Complainants would further show that the said suit was by the defendant therein immediately removed into the District Court of the United States for the Southern Division of the Southern District of Mississippi, whereupon the said Southern Pine Company dismissed its said suit and bill without prejudice, and at its own cost, as appears from the Minutes of said Court, and to which reference is here made.

Complainants would further show that thereafter on October 23, 1911, the defendant herein filed a suit as to the above described land against the Wyatt Lumber Company, complainants' predecessor in title, the said suit having been filed in the Chancery Court of Pearl River County, Mississippi, the purpose of which suit was an attack upon the title of the said Wyatt Lumber Company, and for the purpose of establishing the title of the defendants herein.

Your complainants would further show that upon the filing in the said Chancery Court of Pearl River County of the last mentioned suit that the defendant therein, the Wyatt Lumber Company, filed its petitions and bonds, all as required and conditioned by law, for the removal of the said suit to the United States District Court for the Southern Division of the Southern District of the State of Mississippi, and in which petitions it was charged that the said Southern Pine Company had been for years and was then resorting [fol. 8] to every possible device to avoid and evade the jurisdiction of the Federal Courts, and especially of the District Court of the United States for the Southern Division of the Southern District of Mississippi, and that, with that end in view the said Southern Pine Company, seeking to destroy the jurisdiction of the Federal Courts, and of the said District Court of the United States for the Southern Division of the Southern District of Mississippi, attempted fraudulently to pretend to convey its title to these lands, and in doing so to divide the same so that the amount held in each particular case, and conveyed to each particular vendee would be so small in value as to be below the jurisdiction of the said United States District Court, and therefore, and in pursuance of the said fraudulent plan and scheme to avoid the jurisdiction of the said States District Court, did, prior, to the institution of the suit and the filing of the bill in this case, pretend to convey the said lands away as follows, that is to say, did pretend to convey the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 36, T. 2 S. R. 15 West to Anna F. C. Martin, and did at the same time, and as petitioners are advised and believe on the same date, pretend to convey to F. C. Martin, a portion of the said lands, to-wit: SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, and did at the same time and as petitioners are advised and believe on the same date pretend and attempt to convey to Cecile Dowling, the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, and did at the

same time and as petitioners are advised and believe on the same date, pretend to convey to D. W. Blake the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 36, T. 2 S. R. 15 West, and the sole object of said pretended conveyances being to divide the said land so that the amount and holdings placed in the name of each particular vendee [fol. 9] should be worth less than the sum of \$3,000.00, and thereby attempt to defeat the removal of the said controversies into the said District Court of the United States for the Southern Division of the Southern District of Mississippi.

The said petitions further charged that the said pretended conveyances were, and are simulated and pretended conveyances, that they were not conveyances in fact and were never intended or designed to pass the title claimed by said vendor into the said vendee, the sole object being to place the title in said vendees, leaving the equitable title and the real control thereof still in the said Southern Pine Company, which corporation has since said pretended conveyances and with the knowledge and consent of said vendees continued to claim and assert title thereto, to attempt to exercise acts of ownership thereover and to sue to confirm its title thereto.

The said petitions further charged that none of the said vendees paid anything for the said conveyances, which were wholly voluntary, colorable and simulated, and that the said vendees and each of them held the naked legal title to said lands, that is to say, whatever title the said Southern Pine Company had and could convey, in trust for, and for the benefit and use of the said Southern Pine Company, who is the equitable and beneficial owner thereof.

It was further charged in the petitions that practically all of the stock of the said Southern Pine Company is owned by Eugene Martin, the President, who absolutely controls and dictates the policy and conduct of the said corporation; that F. C. Martin is the son of the said Eugene Martin; that Anna F. C. Martin is the wife of the said Eugene Martin; that W. D. Blake is the brother-in-law, or other near relative of the said Eugene Martin, and that Cecile Dowling is either an employe or clerk of the said corporation, or is otherwise wholly under the control thereof, insofar as the holding of the said lands, the legal title to which was ostensibly placed in her, is concerned. And the said vendees, and each of them, hold the legal title to said lands in trust, for, and for the benefit of the said Southern Pine Company, which is the true, real and equitable owner of whatever claim may be set up and urged under the claim of title set up in complainant's bill, solely for the purpose of defeating the removal of this cause into the United States District Court, and for no other purpose, and as a trustee for the said Southern Pine Company.

Your complainants aver that thereafter each of the said units or causes of action was by the said Wyatt Lumber Company, its predecessor in title, by proper order of the Chancery Court of Pearl River County removed to the said United States District Court for the Southern Division of the Southern District of the State of Mississippi, and the record in each case was filed in the said District Court February 27, 1912; and that thereafter the several plaintiffs

in the said four suits appeared, and each made motions to remand and to continue the same, and each of which said motions to continue was by the Court sustained, and the said causes continued, all as appears from the Minutes and Docket Entries of the said District Court of the United States, and to which reference is here made; and since the time of said continuance no further step has been taken by the complainants in the said causes, or by either of them. Your complainants would further show that thereafter, and on February 26th, 1918, each of the said suits was dismissed in the said District Court under Equity Rule No. 57, as appears from [fol. 11] the Docket Entries in said Court to which reference is likewise here made.

Your complainants would further show unto the Court, that up to the date of the filing of this bill, and since the order of continuance hereinabove referred to, and since the dismissal of the said four suits or causes in the United States District Court, the complainants therein, or either of them, have taken no steps to prosecute or revive the same, and they have, therefore, in effect and to all intents and purposes, abandoned even any simulated or pretended claim to the said lands, and complainants aver and would show unto the Court that it had now been more than ten years since the filing of the said suits, during all of which time the complainants therein have stood by and permitted this complainant and his predecessors in title to pay the taxes on the said lands, and to be and to remain in the active possession and control thereof; and your complainants aver that on account of the negligence and laches of the defendant herein and her predecessors in title, they should not now be permitted to assert any right, title or interest in or to the said lands, or to interfere with your complainants in their ownership, possession and control thereof; and your complainants would further show unto the Court that it has been more than ten years since the filing of the four said suits and since even a pretended right to bring an action as to these lands, or any part thereof, has first accrued to the defendant herein, or to some person through whom she claims, and complainants say that the right of the defendant herein or any person to claim said lands through the said Southern Pine Company, or the said Martin, is now barred by the said statutes of the State of Mississippi.

[fol. 12] Your complainants would further show unto the Court that not only is the defendant herein and his predecessors in title precluded by their negligence and laches and by the statutes of the State of Mississippi from now asserting any right, title or interest in and to the said lands, or any part thereof, but she would further show unto the Court that the said lands have for a period of more than ten years next preceding the filing of this bill been in the open, visible, notorious, exclusive and continuous adverse possession of this complainant and her predecessors in title, claiming same against the whole world, during all of which period of time complainant and his predecessors in title paid the taxes thereon and made such use and occupation of the said lands as the same were capable of.

Your complainants would respectfully show unto the Court that both they and their immediate and remote grantors bought the said land for a valuable consideration and good faith, and upon a clean record title from the State of Mississippi on down to this complainant, predicated upon a patent from the State of Mississippi antedating the patent upon which complainants are informed the defendant herein is now asserting title to said land; that he and his said grantors are innocent purchasers of value as to said land. Complainants further aver that the patent from the State of Mississippi to the said Pearl River Improvement & Navigation Company, upon which their title is founded, constitutes a contract between the said Pearl River Improvement & Navigation Company and the said State of Mississippi, and upon which their title in and to the said land is founded; and they aver that they are now protected in their title to the said land by Article —, Section — of the Constitution of the United States, which they now specifically plead.

[fol. 13] Complainants are informed and believe, and therefore, charge that the defendant herein, although not the real, true and legal owner of said land, and although she has no right or title thereon, is asserting some claim and title, and pretending to have some right and interest in and to the said land, which your complainants aver is wholly a pretended claim of title, and as such casts a doubt, cloud and suspicion upon the rightful ownership and real title and ownership of your complainants in and to said land, and which said alleged title complainants say is calculated to lessen and diminish and does actually lessen and diminish the value of said land to these complainants, and would and does prevent a sale thereof for the actual or real value of said property.

Your complainants would further show unto the Court that they were at the time of the institution of this suit and have been at all times since, and are now citizens of the State of Illinois, and that the defendant herein is, and has been at all said times a citizen of the State of Mississippi, as aforesaid, that this is a suit of a civil nature of which this Court has original jurisdiction, and is a suit between citizens of different states; that the matter here in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand (\$3,000.00) Dollars.

Wherefore, premises considered, complainants pray that the said defendant be summoned as required by law, to appear before this Honorable Court at the next regular term thereof, to-wit, — —, — —, then and there to plead, answer or demur to the allegations of this bill of complaint, and that she be required to set out in her said answer all the particulars of her said pretended right or title [fol. 14] in and to the said land, and that on a final hearing of this cause complainants pray that this Court will decree the said patent and the several deeds, instruments of pretended title relied upon by the defendant herein, may be each and all cancelled and held as naught, and that the defendant shall be perpetually enjoined from setting up or asserting any claim of title or interest in and to the said lands, adverse to the lawful claim and ownership of these com-

plainants, and that these complainants may be decreed to be the sole and only real, true, legal and equitable owners of the said described lands. And complainants further pray that they may have such other, further and general relief as in equity and good conscience they are entitled to have. And as in duty bound complainants will ever pray.

Davis, Wallace & George; T. J. Wills, Attorney for Complainants.

Jurat showing the foregoing was duly sworn to by T. J. Wills. Omitted in printing.

[fol. 15]

IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF COMPLAINT AGAINST F. C. MARTIN

Comes Edward Hines Yellow Pine Trustees composed of Edward Hines, C. F. Wieche and L. L. Barth, Trustees under trust agreement of January 1, 1918, and executing said trust estate under the name of Edward Hines Yellow Pine Trustees, and exhibit their bill of complaint against F. C. Martin, a resident citizen of Pass Christian, Mississippi, and would respectfully show unto the Court that the complainants are residents and citizens of the State of Illinois, and that the defendant herein is a resident citizen of the State of Mississippi, with a post office address at Pass Christian, said State of Mississippi.

Complainants would further show unto the Court that they are the real, true, legal and equitable owners of the following described lands now situated in the County of Pearl River, formerly Marion County, State of Mississippi, to-wit: S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Section 36 T. 2 South, R. 15 West, situated in said county. Complainants would show that the value of the said land, the subject of this litigation, and out of which this controversy arises, is in excess of three thousand dollars.

Complainants arraign title to the above described lands as follows:

a. By Act of Congress approved September 28th, 1850, the said lands were donated to the State of Mississippi; thereafter, in accordance with an Act of the Legislature of the State of Mississippi approved on the 8th day of April, 1871, the said lands were patented to the Pearl River Improvement & Navigation Company, under date June 27th, 1871, said patent being found of record in Book G., pp. 418-428, Record of Deeds, Marion County, in which said lands were then situated, and in Book 4, pp. 204-205, Record of Deeds, Pearl River County, State of Mississippi, where same are now located.

b. The said Pearl River Improvement & Navigation Company, for a valuable consideration, on November 20th, 1872, conveyed the said lands to M. S. Baldwin, said deed being found of record in Book G, pp. 428-437, Record of Deeds, Marion County, and Book 4, pp. 215-225, Record of Deeds, Pearl River County.

c. That thereafter, and on the 17th day of April, 1873, the said M. S. Baldwin, by his attorney-in-fact, Samuel Vose, for valuable consideration conveyed the said lands to Israel Hall by deed of record Book 15, pp. 526, et seq., Record of Deeds, Pearl River County, and also recorded in Book 4, p. 242, said records.

d. Deraigning complainants' title further, they show unto the Court that on the 30th day of April, 1889, the said Israel Hall departed this life leaving a last will and testament which was duly probated in all respects as required by law, the same being found of record in the Record of Wills, County of Marion, State of Mississippi, Book —, pp. —, and in the Record of Wills, Pearl River County, State of Mississippi, Book 1, pp. 35 and 36, by which said last will and testament his wife, Olivia V. Hall, was named as his sole legatee.

[fol. 17] e. Thereafter, on July 23, 1900, the said Olivia B. Hall, by quit claim deed conveyed the said lands to Charlotte H. Eastman, the said deed being in confirmation of a theretofore executed but unrecorded deed from the said Israel Hall to Charlotte H. Eastman, wife of Sidney C. Eastman, said deed being executed about the year 1887, and the deed of confirmation from the said Olivia B. Hall to Charlotte H. Eastman being found of record in Book 12, pp. 222, Record of Deeds, Pearl River County, State of Mississippi.

f. On May 13th, 1904, M. S. Baldwin executed and delivered unto the said Charlotte H. Eastman, a further deed to the said land, ratifying and confirming a previous deed executed by Samuel Vose, as attorney for the said Baldwin, in April 1873, and found of record in Book G, pp. 477-482, Land Records, Marion County, State of Mississippi. This deed of confirmation being recorded Book 14, p. 128, Record of Deeds, Pearl River County, State of Mississippi.

g. Thereafter, and on July 5, 1905, for a valuable consideration the said Charlotte H. Eastman and Sidney C. Eastman by warranty deed conveyed the said lands to the Wyatt Lumber Company, by deed of record, Book 14, pp. 85-87, Record of Deeds, Pearl River County, State of Mississippi.

h. Thereafter, and on January 1, 1918, the said Wyatt Lumber Company conveyed the same to Edward Hines, C. F. Wiehe and L. L. Barth, Trustees of the Edward Hines Yellow Pine Trustees, a Trust Estate, by quit-claim deed found of record in Book 25, pp. 259-261, Record of Deeds, Marion County, State of Mississippi. Reference to the above instruments and the records in which the same are recorded are prayed to be taken and considered as exhibits to [fol. 18] this bill as if the same were copied herein.

Complainants are informed and believe, that the defendant herein is asserting some right or title in and to the said land by virtue of some claim alleged to have originated in a patent said to have been issued by the State of Mississippi therefore to one Mose Mitchell. That the said patent is claimed to have been issued by the State of Mississippi to the said Mitchell, December 7, 1883; and the said Mitchell is alleged to have conveyed the said land to S. L. Woolridge on December 27, 1883; and the said Woolridge is alleged to have conveyed same to Eugene Martin, January 23, 1885; and the said Martin is alleged to have conveyed same to J. G. Barrett, January 23, 1885; and the said Barrett is alleged to have conveyed same to Hy. Clifton Rodes, July 21, 1888; and the said Rodes is alleged to have conveyed same to the Southern Pine Company, August 6, 1889; and the said Southern Pine Company is alleged to have conveyed the said S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ 36-2-15 to the defendant, F. C. Martin, said conveyance as of the date of — —, — —.

Complainants would further show unto the Court that the lands involved in this suit are a part of a large body of wild and timbered lands granted by the State of Mississippi under the said Act of April 8, 1871, to the Pearl River Improvement & Navigation Company, and coming to complainants' predecessors in title from the same source and through the same derangement of title and concerning which there has been in years past litigation between complainants' predecessors in title and the predecessors in title of the defendant, who have from time to time asserted a pretended title to said lands based upon the alleged patents of the State of Mississippi issued years [fol. 19] after the lawful patents through which complainants claim, as set out hereinabove.

Complainants would further show that the defendant asserts a pretended title coming to him through the Southern Pine Company, a corporation, and Eugene Martin, the source of which is an alleged patent issued by the State of Mississippi more than twelve years after the lawful and rightful patent through which complainants' claim was issued, all as set out hereinabove, and complainants would further show that the said Southern Pine Company was at one time, and is now as far as the records show, a corporation under the laws of the State of Mississippi, domiciled in the City of Vicksburg, and that the president of the said corporation, and who likewise owned all, or practically all, of the stock therein, was the said Eugene Martin, who was the dominant power and who absolutely controlled the policies and actions of the said corporation, and under whose direction the various assertions and pretense of title hereinabove referred to have been made.

Complainants would show unto the Court that in the year 1905 in a controversy litigated in the District Court of the United States for the Southern Division of the Southern District of the State of Mississippi, between the said Southern Pine Company and Mrs. Oliva B. Hall, complainants' predecessor in title, and which the title and claims of said Mrs. Olivia B. Hall, and the pretended title of the Southern Pine Company, were as to lands and titles exactly similar to those under which the lands here in controversy are held

and claimed; the title of the said Mrs. Hall, complainants' predecessor, was upheld and declared to be legal and valid, the decision of the Circuit Court of Appeals for the Fifth Circuit and by the United [fol. 20] States Supreme Court, as reported in 105 Fed. Rep. p. 84, 44 C. C. R. p. 363, and 180 U. S. p. 639. That notwithstanding this, thereafter the said Southern Pine Company continued to assert a claim or title to other lands similar as to title, among them being the four forties here in controversy, which lands, though exactly the same as source and deraignment of title as those covered in the litigation hereinabove to, had, complainants are advised, through inadvertance or mistake, been left out of the pleadings and decree in that cause, and on the 29th day of September, 1910, the said Southern Pine Company brought suit in the Chancery Court of Pearl River County, Mississippi, against the Wyatt Lumber Company, one of the defendant's predecessors in title, claiming title to the identical lands here involved, averring that they were the true and lawful owner thereof, and asserting their title from the same source and through the same chain of title as hereinabove set out.

Complainants would further show that the said suit was by the defendant therein immediately removed into the District Court of the United States for the Southern Division of the Southern District of Mississippi, whereupon the said Southern Pine Company dismissed its suit and bill without prejudice, and at its own cost, as appears from the Minutes of said Court, and to which reference is here made.

Complainants would further show that thereafter on October 23, 1911, the defendant herein filed a suit as to the above described land against the Wyatt Lumber Company, complainants' predecessor in title, the said suit having been filed in the Chancery Court of Pearl River County, Mississippi, the purpose of which suit was an attack upon the title of the said Wyatt Lumber Company, and for the purpose of establishing the title of the defendant herein.

[fol. 21] Your complainants would further show that upon the filing in the said Chancery Court of Pearl River County of the last mentioned suit that the defendant therein, the Wyatt Lumber Company, filed its petitions and bonds, all as required and conditioned by law, for the removal of the said suit to the United States District Court for the Southern Division of the Southern District of the State of Mississippi, and in which petitions it was charged that the said Southern Pine Company had been for years and was then resorting to every possible device to avoid and evade the jurisdiction of the Federal Courts, and especially of the District Court of the United States for the Southern Division of the Southern District of Mississippi, and that, with that end in view the said Southern Pine Company seeking to destroy the jurisdiction of the Federal Courts, and of the said District Court of the United States for the Division of the Southern District of Mississippi, attempted fraudulently to pretend to convey its title to these lands, and in doing so to divide the same so that the amount held in each particular case, and conveyed to each particular vendee would be so small in value as to be below the jurisdiction of the said United States District Court, and therefore, and in the pursuance of the said fraudulent plan and scheme to avoid the jurisdiction of the said United States District

Court, did, prior to the institution of the suit and the filing of the bill in this case, pretend to convey the said lands away as follows, that is to say did pretend to convey the N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of said Section 36, T. 2 S. R. 15 West, to Anna F. C. Martin, and did at the same time, and as petitioners are advised and believed on the same date, pretend to convey to F. C. Martin, a portion of the said lands, to-wit: S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, and [fol. 22] did at the same time and as petitioners are advised and believe on the same date, pretend and attempt to convey to Cecile Dowling, the S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, and did at the same time and as petitioners are advised and believe on the same date, pretend to convey to D. W. Blake the S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of said Section 36, T. 2 S. R. 15 West, and the sole object of said pretended conveyances being to divide the said land so that the amount and holdings placed in the name of each particular vendee should be worth less than the sum of \$3,000.00, and thereby attempt to defeat the removal of the said controversies into the said District Court of the United States for the Southern Division of the Southern District of Mississippi.

The said petitions further charged that the said pretended conveyances were, and are simulated and pretended conveyances that they were not conveyances in fact and were never intended or designed to pass the title claimed by said vendor into the said vendees, the sole object being to place the record title in said vendees, leaving the equitable title and the real control thereof still in the said Southern Pine Company, which corporation has since said pretended conveyances and with the knowledge and consent of said vendees continued to claim and assert title thereto, to attempt to exercise acts of ownership thereover and to sue to confirm its title thereto.

The said petitions further charged that none of the said vendees paid anything for the said conveyances, which were wholly voluntary, colorable and simulated, and that the said vendees and each of them held the naked legal title to said lands, that is to say, whatever title the said Southern Pine Company had and could convey, in trust for, and for the benefit and use of the said Southern Pine [fol. 23] Company, who is the equitable and beneficial owner thereof.

It was further charged in the petitions that practically all of the stock of the Said Southern Pine Company is owned by Eugene Martin, the President, who absolutely controls and dictates the policy and conduct of the said corporation; that F. C. Martin is the son of the said Eugene Martin; that Anna F. C. Martin is the wife of the said Eugene Martin; that D. W. Blake is the brother-in-law, or other near relative of the said Eugene Martin, and that Cecile Dowling is either an employee or clerk of the said corporation, or is otherwise wholly under the control thereof, insofar as the holding of the said lands, the legal title to which was ostensibly placed in her, is concerned. And the said vendees, and each of them, hold the legal title to said lands in trust for, and for the benefit of the said Southern Pine Company, which is the true, real and equitable owner of whatever claim may be set up and urged under the claim of title set up in complainants' bill solely for the purpose of defeating the removal

of this cause into the United States District Court, and for no other purpose, and as trustees for the said Southern Pine Company.

Your complainants aver that thereafter each of the said suits or causes of action was by the said Wyatt Lumber Company, its predecessor in title, by proper order of the Chancery Court of Pearl River County removed to the said United States District Court for the Southern Division of the Southern District of the State of Mississippi, and the record in each case was filed in the said District Court February 27, 1912; and that thereafter the several plaintiffs in the said four suits appeared, and each made motions to remand and to continue [fol. 24] the same, and each of which said motions to continue was by the Court sustained, and the said causes continued, all as appears from the Minutes and Docket Entries of said District Court of the United States, and to which reference is here made; and since the time of said continuance no further step has been taken by the complainants in the said causes, or by either of them. Your complainants would further show that thereafter, and on February 26th, 1918, each of the said suits was dismissed in the said District Court under Equity Rule No. 57, as appears from the Docket Entries in said Court to which reference is likewise here made.

Your complainants would further show unto the Court, that up to the date of the filing of this bill, and since the order of continuance hereinabove referred to, and since the dismissal of the said four suits or causes in the United States District Court, the complainants herein, nor either of them, have taken no steps to prosecute or revive the same, and they have, therefore, in effect and to all intents and purposes, abandoned even any simulated or pretended claim to the said lands, and complainants aver and would show unto the Court that it has now been more than ten years since the filing of the said suits, during all of which time the complainants therein have stood by and permitted this complainant and his predecessors in title to pay the taxes on the said lands, and to be and to remain in the active possession and control thereof; and your complainants aver that on account of the negligence and laches of the defendant herein and his predecessors in title, they should not now be permitted to assert any right, title or interest in or to the said lands, or to interfere with your complainants in their ownership, possession and control thereof; and your complainants would further show unto the Court that it has been more than ten years since the filing of [fol. 25] the four said suits and since even a pretended right to bring an action as to these lands, or any part thereof, has first accrued to the defendant herein, or to some person through whom he claims, and complainants say that the right of the defendant herein or any other person to claim said lands through the said Southern Pine Company, or the said Martin, is now barred by the Statutes of the State of Mississippi.

Your complainants would further show unto the Court that not only is the defendant herein and his predecessors in title precluded by their negligence and laches and by the statutes of the State of Mississippi from now asserting any right, title or interest in and to the said lands, or any part thereof, but she would further show unto the Court that the said lands have for a period of more than

ten years next preceding the filing of this bill been in the open, visible, notorious, exclusive, hostile and continuous adverse possession of this complainant and her predecessors in title, claiming same against the whole world, during all of which period of time complainant and his predecessors in title paid the taxes thereon and made such use and occupation of the said lands as the same were capable of.

Your complainants would respectfully show unto the Court that both they and their immediate and remote grantors bought the said land for a valuable consideration and in good faith, and upon a clean record title from the State of Mississippi on down to this complainant, predicated upon a patent from the State of Mississippi antedating the patent upon which complainants are informed the defendant herein is now asserting title to said land; that he and his said grantors are innocent purchasers for value as to the said land. [fol. 26] Complainants further aver that the patent from the State of Mississippi to the said Pearl River Improvement & Navigation Company, upon which his title is founded, constitutes a contract between the said Pearl River Improvement & Navigation Company and the said State of Mississippi, and upon which his title in and to the said land is founded; and he avers that he is now protected in his title to the said land by Article —, Section — of the Constitution of the United States, which she now specifically pleads.

Complainants are informed and believe, and therefore, charge that the defendant herein although not the real, true and legal owner of said land, and although he has no right or title thereto, is asserting some claim and title, and pretending to have some right and interest in and to the said land, which your complainants aver is wholly pretended claim of title and as such casts a doubt, cloud and suspicion upon the rightful ownership and real title and ownership of your complainant in and to said land, and which said alleged complainants say is calculated to lessen and diminish and does actually lessen and diminish the value of said land to these complainants, and would and does prevent a sale thereof for the actual or real value of said property.

Your complainants would further show unto the Court that they were at the time of the institution of this suit and have been at all times since, and now are, citizens of the State of Illinois, and that the defendant herein is, and has been at all said times, a citizen of the State of Mississippi, as aforesaid; that this — a suit of a civil nature of which this Court has original jurisdiction, and is a suit between citizens of different states; but the matter here in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand (\$3,000.00) Dollars.

[fol. 27] Wherefore, premises considered, complainants pray that the said defendants be summoned as required by law to appear before this Honorable Court at the next regular term thereof, to wit, — — —, then and there to plead, answer or demur to the allegations of this bill of complaint, and that he be required to set out in his said answer all the particulars of her said pretended right in and to the said land, and that on a final hearing of this cause complainants pray that this Court will decree the said patent and

the several deeds, instruments or muniments of pretended title relied upon by the defendant herein, may be each and all cancelled and held as naught, and that the defendant shall be perpetually enjoined from setting up or asserting any claim of title or interest in and to the said lands, adverse to the lawful claim and ownership of these complainants, and that these complainants may be decreed to be the sole and only real, true, legal and equitable owners of the said described lands. And complainants further pray that they may have such other and further and general relief as in equity and good conscience they are entitled to have.

And as in duty bound complainants will ever pray.

Davis, Wallace & Georges, T. J. Wills, Attorney for Complainants.

Jurat showing the foregoing was duly sworn to by T. J. Wills omitted in printing.

[fol. 28]

IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF COMPLAINT AGAINST H. P. LEWIS

Comes the Edward Hines Yellow Pine Trustees composed of Edward Hines, L. L. Barth and C. C. Wieche, trustees under trust agreement of January 1, 1918, and executing said trust estate under the name of the Edward Hines Yellow Pine Trustees, and exhibit their bill of complaint against H. P. Lewis, whose residence and post office address are unknown to complainants, after diligent search and inquiry, and would respectfully show unto the Court that the complainants are residents and citizens of the State of Illinois, and that the defendant herein is a resident citizen of the State of —, with post office address at —, State of —.

Complainants would further show unto the Court that they are the real, true, legal and equitable owners of the following described lands now situated in the County of Pearl River, formerly Marion [fol. 29] County, State of Mississippi, to wit: S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Section 36, Township 2 South, Range 15 West, situated in said county. Complainants would show that the value of said land, the subject of this litigation, and out of which this controversy arises, is in excess of three thousand dollars.

Complainants deraign title to the above described lands as follows:

a. By Act of Congress approved September 28th, 1850, the said lands were donated to the State of Mississippi; thereafter, in accordance with an Act of the Legislature of the State of Mississippi approved on the 8th day of April, 1871, the said lands were patented to the Pearl River Improvement & Navigation Company, under date June 27th, 1871, said patent being found of record in Book G, pp. 418-428, Record of Deeds, Marion County, in which said

lands were then situated, and in Book 4, ppp. 204-205, Record of Deeds, Pearl River County, State of Mississippi, w-ere same are now located.

b. The said Pearl River Improvement and Navigation Company, for a valuable consideration, on November 20th, 1872, conveyed the said lands to M. S. Baldwin, said deed being found of record in Book G, pp. 428-437, Record of Deeds, Marion County, and Book 4, pp. 215-225, Record of Deeds, Pearl River County.

c. That thereafter, and on the 17th day of April, 1873, the said M. S. Baldwin, by his attorney in fact, Samuel Vose, for a valuable consideration conveyed the said lands to Israel Hall by deed of record Book 15, pp. 526, et seq., Record of Deeds, Pearl River County, and also recorded in Book 4, p. 242, said Records.

[fol. 30] d. Deraigning complainants' title further, they show unto the Court that on the 30th day of April, 1889, the said Israel Hall departed this life, leaving a last will and testament which was duly probated in all respects as required by law, the same being found of record in the Record of Wills, County of Marion, State of Mississippi, Book —, pp. —, and in the Record of Wills, Pearl River County, State of Mississippi, Book 1, pp. 35 and 36, by which last will and testament, his wife, Olivia B. Hall, was named as his sole legatee.

e. Thereafter, on July 23, 1900, the said Olivia B. Hall, by quit-claim deed conveyed the said lands to Charlotte H. Eastman, the said deed being in confirmation of a theretofore executed but unrecorded deed from the said Israel Hall to Charlotte H. Eastman, wife of Sidney C. Eastman, said deed being executed about the year 1887, and the deed of confirmation from the said Olivia B. Hall to Charlotte N. Eastman being found of record in Book 12, pp. 222, Record of Deeds, Pearl River County, State of Mississippi.

f. On May 13th, 1904, M. S. Baldwin executed and delivered unto the said Charlotte H. Eastman, a further deed to the said land, ratifying and confirming a previous deed executed by Samuel Vose, as attorney for the said Baldwin, in April, 1873, and found of record in Book G, pp. 477-482, Land Records, Marion County, State of Mississippi. This deed of confirmation being recorded in Book p. 128, Record of Deeds, Pearl River County, State of Mississippi.

g. Thereafter, and on July 5, 1905, for a valuable consideration the said Charlotte H. Eastman and Sidney C. Eastman by warranty [fol. 31] deed conveyed the said lands to the Wyatt Lumber Company, by deed of record, Book 14, pp. 85-87, Record of Deeds, Pearl River County, State of Mississippi.

h. Thereafter, and on January 1, 1918, the said Wyatt Lumber Company conveyed the same to Edward Hines, C. F. Wiehe and L. L. Barth, Trustees of the Edward Hines Yellow Pine Trustees, a Trust Estate, by quit-claim deed found of record in Book 25, pp. 259-261, Record of Deeds, Marion County, State of Mississippi.

Reference to the said above instruments and the records in which the same are recorded are prayed to be taken and considered as exhibits to this bill as if the same were copied herein.

Complainants are informed and believe, that the defendants herein is asserting some right or title in and to the said land by virtue of some claim alleged to have originated in a patent said to have been issued by the State of Mississippi therefor to one Mose Mitchell. That the said patent is claimed to have been issued by the State of Mississippi to the said Mitchell, December 7, 1883; and the said Mitchell is alleged to have conveyed the said land to S. L. Woolridge on December 27, 1883; and the said Woolridge is alleged to have conveyed same to Eugene Martin, January 23, 1885; and the said Martin is alleged to have conveyed same to J. G. Barrett, January 23, 1885; and the said Barrett is alleged to have conveyed same to Hy. Clifton Rodes, July 21, 1888; and the said Rodes is alleged to have conveyed same to the Southern Pine Company, August 5, 1889; and the said Southern Pine Company is alleged to have the said S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ aforesaid to the defendant. [fol. 32] D. W. Blake, said conveyance as of the date of January 26, 1909; and the defendant, D. W. Blake, is alleged to have conveyed same to H. P. Lewis on June 24, 1920, said conveyance being recorded on Book 27, p. 307, Deed Records of Pearl River County, Mississippi.

Complainants would further show unto the Court that the lands involved in this suit are a part of a large body of wild and timbered lands granted by the State of Mississippi under the said Act of April 8, 1871, to the Pearl River Improvement & Navigation Company, and coming to complainants' predecessors in title from the same source and through the same derangement of title concerning which there has been in years past litigation between complainants' predecessors in title and the predecessors in title of the defendant, who have from time to time asserted a pretended title to said lands based upon the alleged patents of the State of Mississippi issued years after the lawful patents through which complainants claim as set out heremabov.

Complainants would further show that the defendant asserts a pretended title coming to him through the Southern Pine Company, a corporation, and Eugene Martin, the source of which is an alleged patent issued by the State of Mississippi, more than twelve years after the lawful and rightful patent through which complainant claims was issued, all as set out hereinabove, and complainant would further show that the said Southern Pine Company was at one time, and is now, as far as the record shows, a corporation under the laws of the State of Mississippi, domiciled in the City of Vicksburg, and the President of the said corporation, and who likewise owned all, or practically all, of the stock therein, was the said Eugene Martin, who was the dominant power and who absolutely controlled the policy [fol. 33] and actions of the said corporation, and under whose direction the various assertions and pretense of title hereinabove referred to have been made.

Complainants would further show unto the Court that in the year 1905 in a controversy litigated in the District Court of the United States for the Southern Division of the Southern District of the State of Mississippi, between the said Southern Pine Company and Mrs. Olivia B. Hall, complainants' predecessor in title, and in which the title and claims of said Mrs. Olivia B. Hall, and the pretended title of the Southern Pine Company, were as to lands and titles exactly similar to those under which the land here in controversy are held and claimed, the title of the said Mrs. Hall, complainants' predecessor, was upheld and declared to be legal and valid, the decision of the Circuit Court in this regard being affirmed both by the Circuit Court of Appeals for the Fifth Circuit and by the United States Supreme Court, as reported in 105 Fed. Rep. p. 84, 44 C. C. A. p. 363, and 180 U. S. p. 639. That notwithstanding this, thereafter the said Southern Pine Company continued to assert a claim or title to other lands similar as to title, among them being the four forties here in controversy, which lands, though exactly the same as to source and deraignment of title as to those covered in the litigation hereinabove referred to, had, complainants are advised, through inadvertance or mistake, been left out of the pleadings and decree in that cause, and on the 29th day of September, 1910, the said Southern Pine Company brought suit in the Chancery Court of Pearl River County, Mississippi, against the Wyatt Lumber Company, one of the defendants in title, claiming title to the identical lands here involved, averring that they were the true and lawful owner thereof, and asserting their title from the same source and through the same [fol. 34] chain of title as hereinabove set out.

Complainants would further show that the said suit was by the defendant therein immediately removed into the District Court of the United States for the Southern Division of the Southern District of Mississippi, whereupon the said Southern Pine Company dismissed its said suit and bill without prejudice, and at its own cost, as appears from the Minutes of said Court, and to which reference is here made.

Complainants would further show that thereafter on October 23, 1911, the defendant herein filed a suit as to the above described land against the Wyatt Lumber Company, complainants' predecessor in title, the said suit having been filed in the Chancery Court of Pearl River County, Mississippi, the purpose of the suit being an attack upon the title of the said Wyatt Lumber Company and for the purpose of establishing the title of the defendant herein.

Your complainants would further show that upon the filing in the said Chancery Court of Pearl River County of the last mentioned suit that the defendant therein, the Wyatt Lumber Company, filed its petitions and bonds, all as required and conditioned by law, for the removal of the said suit to the United States District Court for the Southern Division of the Southern District of the State of Mississippi, and in which petitions it was charged that the said Southern Pine Company had been for years and was then resorting to every possible device to avoid and evade the jurisdiction of the Federal Courts, and especially of the District Court of the United States

for the Southern Division of the Southern District of Mississippi, and that, with that end in view, the said Southern Pine Company, seeking to destroy the jurisdiction of the Federal Courts, and the [fol. 35] said District Court of the United States for the Southern Division of the Southern District of Mississippi, attempted fraudulently to pretend to convey its title to these lands, and in doing so to divide the same so that the amount held — particular case, and conveyed to each particular vendee would be so small in value as to be below the jurisdiction of the said United States District Court, and therefore, and in pursuance of the said fraudulent plan and scheme to avoid the jurisdiction of the said United States District Court, did, prior to the institution of the suit and filing of the bill in this case, pretended to convey the said lands away as follows: that is to say, did pretend to convey the N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, to Anna F. C. Martin, and did at the same time, and as petitioner is advised and believes on the same date, pretend to convey to F. C. Martin, a portion of said lands, to-wit: S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, and did at the same time and as petitioners are advised and believe on the same date pretend and attempt to convey to Cecile Dowling, the S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Section 36, T. 2 S. R. 15 West, and did at the same time and as petitioners are advised and believe on the same date, pretend to convey to D. W. Blake, the S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of said Section 36, T. 2 S. R. 15 West, the sole object of said pretended conveyance being to divide the said land so that the amount and holdings placed in the name of each particular vendee should be worth less than the sum of \$3,000.00 and thereby attempt to defeat the removal of the said controversies into the said District Court of the United States for the Southern Division of the Southern District of Mississippi.

The said petitions further charged that the said pretended conveyances were, and are simulated and pretended conveyances, that [fol. 36] they were not conveyances in fact and were never intended or designed to pass the title claimed by said vendor into the said vendees, the sole object being to place the record title in said vendees, leaving the equitable title and the real control thereof still in the said Southern Pine Company, which corporation has since said pretended conveyance and with the knowledge and consent of said vendees continued to claim and assert title thereto, to attempt to exercise acts of ownership thereover and to sue to confirm its title thereto.

The said petition further charged that none of the said vendees paid anything for the said conveyances, which wholly voluntary, colorable and simulated, and that the said vendees and each of them held the naked legal title to said lands, that is to say, whatever title the said Southern Pine Company had and could convey, in trust for, and for the benefit and use of the said Southern Pine Company, who is the equitable and beneficial owner thereof.

It was further charged in the petitions that practically all of the stock of the said Southern Pine Company is owned by Eugene Martin, the President, who absolutely controls and dictates the policy

and conduct of the said corporation; that F. C. Martin is the son of the said Eugene Martin; that Anna F. C. Martin is the wife of the said Eugene Martin; that D. W. Blake is the brother-in-law, or other near relative of the said Eugene Martin, and that Cecile Dowling is either an employee or clerk of the said corporation, or is otherwise wholly under the control thereof, insofar as the holding of the said lands, the legal title to which was ostensibly placed in her, is concerned. And the said vendees, and each of them, hold the legal title to said lands in trust for, and for the benefit of the said South-[fol. 37] ern Pine Company, which is the true, real and equitable owner of whatever claim may be set up and urged under the claim of title set up in the complainants' bill, solely for the purpose of defeating the removal of this cause into the United States District Court, and for no other purpose, and as a trustee for the said Southern Pine Company.

Your complainants aver that thereafter each of the said suits or causes of action was by the said Wyatt Lumber Company its predecessors in title, by proper order of the Chancery Court of Pearl River County removed to the said United States District Court for the Southern Division of the Southern District of the State of Mississippi, and the record in each case was filed in the said District Court February 27th, 1912; and that thereafter the several plaintiffs in the said four suits approved, and each made motions to remand and to continue the same, and each of which said motions to continue was by the Court sustained, and the said causes continued, all as appears from the Minutes and Docket Entries of the said District Court of the United States, and to which reference is here made; and since the time of said continuance no further step has been taken by the complainants in the said causes, or by either of them. Your complainants would further show that thereafter, and on February 26th, 1918, each of the said suits was dismissed in the said District Court under Equity Rule No. 57, as appears from the Docket Entries in said Court to which reference is likewise here made.

Your complainants would further show unto the Court, that up to the date of the filing of this bill, and since the order of continuance hereinabove referred to, and since the dismissal of the said four [fol. 38] suits or causes in the United States District Court, the complainants therein, nor either of them, have taken no steps to prosecute or revive the same, and they have, therefore, in effect and to all intents and purposes, abandoned even any simulated or pretended claim to the said lands, and complainants aver and would show unto the Court that it has now been more than ten years since the filing of the said suits, during all of which time the complainants therein have stood by and permitted these complainants and their predecessors in title to pay the taxes on the said lands, and to be and to remain in the active possession and control thereof; and your complainants aver that on account of the negligence and laches of the defendant herein and his predecessors in title, they should not now be permitted to assert any right, title or interest in or to the said lands, or to interfere with your complainants in their ownership,

possession and control thereof; and your complainants would further show unto the Court that it has been more than ten years since the filing of the four said suits and since even a pretended right to bring an action as to these lands, or any part thereof; has first accrued to the defendant herein, or to some person through whom he claims, and complainants say that right of the defendant herein or any person to claim said lands through the said Southern Pine Company, or the said Martin, is now barred by the statutes of the State of Mississippi.

Your complainants would further show unto the Court that not only is the defendant herein and their predecessors in title precluded by their negligence and laches and by the statutes of the State of Mississippi from now asserting any right, title or interest in and to the said lands, or any part thereof, but they would further show unto the Court that the said lands have for a period of more [fol. 39] than ten years next preceding the filing of this bill been in the open, visible, notorious, exclusive, hostile and continuous adverse possession of these complainants and their predecessors in title, claiming same against the whole world, during all of which period of time complainants and their predecessors in title, paid the taxes thereon and made such use and occupation of the said lands as the same were capable of.

Your complainants would respectfully show unto the Court that both they and their immediate and remote grantors bought the said land for a valuable consideration and in good faith, and upon a clean record title from the State of Mississippi on down to these complainants, predicated upon a patent from the State of Mississippi antedating the patent upon which complainants are informed that the defendant herein is now asserting title to said land; that he and his said grantors are innocent purchasers for value as to the said land. Complainants further aver that the patent from the State of Mississippi to the said Pearl River Improvement and Navigation Company, upon which their title is founded, constitutes a contract between that said Pearl River Improvement and Navigation Company and the said State of Mississippi, and upon which their title in and to the said land is founded; and they aver that they are now protected in their title to the said land by Article —, Section — of the the Constitution of the United States, which they now specifically plead.

Complainants are informed and believe, and therefore charge that the defendant herein, although not the real, true and legal owner of said land, and although he has no right or title thereto, is asserting some claim and title, and pretending to have some right and interest [fol. 40] in and to the said land, which your complainants aver is wholly a pretended claim of title, and as such casts a doubt, cloud and suspicion upon the rightful ownership and real title and ownership of your complainants in and to said land, and which said alleged title complainants say is calculated to lessen and diminish and does actually lessen and diminish the value of said land to these complainants, and would and does prevent a sale thereof for the actual or real value of said property.

Your complainants would further show unto the Court that they were at the time of the institution of this suit and have been at all

times since, and now are citizens of the State of Illinois, and that the defendant herein is, and has been at all said times a citizen of the State of Mississippi, as aforesaid that this is a suit of a civil nature of which this Court has original jurisdiction, and is a suit between citizens of different states; that the matter here in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand (\$3,000.00) Dollars.

Wherefore, premises considered, complainants pray that the said defendant be summoned as required by law to appear before this Honorable Court at the next regular term thereof, to-wit, — — —, there and then to plead, answer or demur to the allegations of this bill of complaint, and that he be required to set out in his answer all the particulars of her said pretended right or title in and to the said lands and that on a final hearing of this cause complainants pray that this Court will decree the said patent and the several deeds, instruments or muniments of pretended title relied upon by the defendant herein, may be each and all cancelled and held as naught, [fol. 41] and that the defendant shall be perpetually enjoined from setting up or asserting any claim of title or interest in and to the said lands, adverse to the lawful claim and ownership of these complainants, and that these complainants may be decreed to be the sole and only real, true, legal and equitable owners of the said described lands. And complainants further pray that they may have such other, further and general relief as in equity and good conscience they are entitled to have.

And as in bound complainants will ever pray.

Davis, Wallace & Georges. T. J. Wills, Attorney for Complainants.

Jurat showing the foregoing was duly sworn to by T. J. Wills omitted in printing.

[fol. 42]

IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF COMPLAINT AGAINST GEORGE LAWRENCE

Comes the Edward Hines Yellow Pine Trustees composed of Edward Hines, L. L. Barth and C. F. Wiehe, trustees under agreement of January 1, 1918, and executing said trust estate under the name of the Edward Hines Yellow Pine Trustees, and exhibit their bill of complaint against George Lawrence, a resident citizen of Chicago, Illinois, and would respectfully show unto the Court that the complainants are residents and citizens of the State of Illinois, and that the defendant herein is a resident citizen of the State of Illinois with post office address at Chicago, Illinois.

Complainants would show, further, unto the Court that they are the real, true, legal and equitable owners of the following described lands now situated in the County of Pearl River, formerly Marion

County, State of Mississippi, to-wit: S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Section 36, Township 2 South, Range 15 West, situated in said county. Complainants would show that the value of said land, the subject of this litigation, and out of which this controversy arises, is in excess of three thousand dollars.

Complainants deraign title to the above described lands as follows:

a. By Act of Congress approved September 28th, 1850, the said lands were donated to the State of Mississippi; thereafter in accordance with an Act of the Legislature of the State of Mississippi approved on the 8th day of April, 1871, the said lands were patented to the Pearl River Improvement & Navigation Company, under date of June 27th, said patent being found of record in Book G, pp. 418-428, Record of Deeds, Marion County, in which said lands were then situated, and in book 4, pp. 204-205, Record of Deeds, Pearl River County, State of Mississippi, where same are now located.

b. The said Pearl River Improvement and Navigation Company, for a valuable consideration, on November 20th, 1872, conveyed the said lands to M. S. Baldwin, said deed being found of record in Book G, pp. 428-437, Record of Deeds, Marion County, and Book 4, pp. 215-225, Record of Deeds, Pearl River County.

c. That thereafter, and on the 17th day of April, 1873, the said M. S. Baldwin, by his attorney in fact, Samuel Vose, for a valuable consideration conveyed the said lands to Israel Hall, by deed of record Book 15, pp. 526, et sequa, Record of Deeds, Pearl River County, and also recorded in Book 4, p. 242, said Records.

d. Deraigning complainants' title further, they show unto the Court that on the 30th day of April, 1889, the said Israel Hall departed this life, leaving a last will and testament which was duly probated in all respects as required by law, the same being found of record in the Record of Wills, County of Marion, State of Mississippi, Book —, pp. —, and in the Record of Wills, Pearl River County, State of Mississippi, Book 1, pp. 35 and 36, by which said last will and testament his wife, Olivia B. Hall, was named as his sole legatee.

[fol. 44] e. Thereafter on July 23, 1900, the said Olivia B. Hall, by quit-claim deed conveyed the said lands to Charlotte H. Eastman, the said deed being in confirmation of a theretofore executed but unrecorded deed from the said Israel Hall to Charlotte H. Eastman, wife of Sidney C. Eastman, said deed being executed about the year 1887, and the deed of confirmation from the said Olivia B. Hall to Charlotte H. Eastman being found of record in Book 12, p. 222, Record of Deeds, Pearl River County, State of Mississippi.

f. On May 13th, 1904, M. S. Baldwin executed and delivered unto the said Charlotte H. Eastman, a further deed to the said land, ratifying and confirming a previous deed executed by Samuel Vose, as attorney for the said Baldwin, in April 1873, and found of record in Book G, pp. 477-482, Land Records, Marion County, State of

Mississippi. This deed of confirmation being recorded in Book 14, p. 128, Record of Deeds, Pearl River County, State of Mississippi.

g. Thereafter, and on the 5th of July, 1905, for a valuable consideration the said Charlotte H. Eastman and Sidney C. Eastman by warranty deed conveyed the said lands to the Wyatt Lumber Company, by deed of record, Book 14, pp. 85-87 Record of Deeds, Pearl River County, State of Mississippi.

h. Thereafter, and on January 1, 1918, the said Wyatt Lumber Company conveyed the same to Edward Hines, C. F. Wiehe and L. L. Barth, Trustees of the Edward Hines Yellow Pine Trustees, a Trust Estate, by quit-claim deed found of record in Book 25, pp. 259-261, Record of Deeds, Marion County, State of Mississippi.

[fol. 45] Reference to the said above instruments and the records in which the same are recorded are prayed to be taken and considered as exhibits to this bill as if the same were copied herein.

Complainants are informed and believe, that the defendant herein is asserting some right or title in and to the said land by virtue of some claim alleged to have originated in a patent said to have been issued by the State of Mississippi therefor to one Mose Mitchell. That the said patent is claimed to have been issued by the State of Mississippi to the said Mitchell, December 7, 1883; and the said Mitchell is alleged to have conveyed the said land to the said S. L. Woolridge on December 27, 1883; and the said Woolridge is alleged to have conveyed same to J. G. Barrett, January 23, 1885, and the said Barrett is alleged to have conveyed same to Hy. Clifton Rodes, July 21, 1888; and the said Rodes is alleged to have conveyed same to the Southern Pine Company, August 5, 1889; and the said Southern Pine Company is alleged to have conveyed the said S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, 36-2-15 aforesaid to Cecile Dowling, said conveyance as of the date of — —, — —; and said Cecile Dowling is alleged to have conveyed same to George Lawrence, of Chicago, Illinois, on the — day of — —, 19—, which conveyance is of record in Book 27, p. 335, Deed Records of Pearl River County, Mississippi.

Complainants would further show unto the Court that the lands involved in this suit are a part of a large body of wild and timbered lands granted by the State of Mississippi under the said Act of April 8, 1871, to the Pearl River Improvement & Navigation Company, and coming to Complainants' predecessors in title from the same source and through the same deraignment of title and con- [fol. 46] cerning which there has been in years past litigation between complainants' predecessors in title and the predecessors in title of the defendant, who have from time to time asserted a pretended title to said lands based upon the alleged patents of the State of Mississippi issued years after the lawful patents through which complainants claim, as set out hereinabove.

Complainants would further show that the defendant asserts a pretended title coming to him through the Southern Pine Company, a corporation, and Eugene Martin, the source of which is an alleged patent issued by the State of Mississippi, more than twelve years after the lawful and rightful patents through which complainants

claim was issued, all as set out herein above, and complainants would further show that the said Southern Pine Company was at one time, and is now as far as the records show, a corporation under the laws of the State of Mississippi, domiciled in the city of Vicksburg, and that the President of the said corporation, and who likewise owned all, or practically all, of the stock therein, was the said Eugene Martin, who was the dominant power and who absolutely controlled the policies and actions of the said corporation, and under whose dierection the various assertions and pretense of title referred to have been made.

Complainants would show unto the Court that in the year 1905 in a controversy litigated in the District Court of the United States for the Southern Division of the Southern District of the State of Mississippi, between the said Southern Pine Company and Mrs. Olivia B. Hall, complainants' predecessor in title, and in which the title and claims of said Mrs. Olivia B. Hall, and the pretended title of the Southern Pine Company were as to lands and title exactly [fol. 47] similar to those under which the lands there in controversy are held and claimed, the title of the said Mrs. Hall, complainants' predecessor in title, was upheld and declared to be legal and valid, the decision of the Circuit Court in this regard being affirmed both by the Circuit Court of Appeals for the Fifth Circuit and by the United States Supreme Court, as reported in 105 Fed. Rep. p. 84, 44 C. C. A. p. 363, and 180 U. S. p. 639. That, notwithstanding this, thereafter the said Southern Pine Company continued to assert a claim or title to other lands similar as to title, among them being the four forties here in controversy, which lands, though exactly the same as to source and deraignment of title as those covered in the litigation hereinabove referred to, had, complainants are advised, through inadvertance or mistake, been left out of the pleadings and decree in that cause, and on the 29th day of September, 1910, the said Southern Pine Company brought suit in the Chancery Court of Pearl River County, Mississippi, against the Wyatt Lumber Company, one of the defendants' predecessors in title claiming title to the identical lands here involved, averring that they were the true and lawful owner thereof, and asserting their title from the same source and through the same chain of title as hereinabove set out.

Complainants would further show that the said suit was by the defendant therein immediately removed into the District Court of the United States for the Southern Division of the Southern District of Mississippi, whereupon the said Southern Pine Company dismissed its said suit and bill without prejudice, and at its own cost, as appears from the Minutes of said Court, and to which reference is here made. [fol. 48] Complainants would further show that thereafter on October 23, 1911, the defendants herein filed a suit as to the above described lands against the Wyatt Lumber Company, complainants' predecessor in title, the said suit having been filed in the Chancery Court of Pearl River County, Mississippi, the purpose of the suit being an attack upon the title of the said Wyatt Lumber Company

and for the purpose of establishing the title of the defendant herein.

Your complainants would further show that upon the filing in the said Chancery Court of Pearl River County of the last mentioned suit that the defendant therein, the Wyatt Lumber Company, filed its petitions and bonds, all as required and conditioned by law, for the removal of the said suit, to the United States District Court for the Southern Division of the Southern District of the State of Mississippi, and in which petitions it was charged that the said Southern Pine Company had been for years and was then resorting to every possible device to avoid and evade the jurisdiction of the Federal Courts, and especially of the District Court of the United States for the Southern Division of the Southern District of Mississippi, and that, with that end in view the said Southern Pine Company, seeking to destroy the jurisdiction of the Federal Courts, and of the said District Court of the United States for the Southern Division of the Southern District of Mississippi, attempted fraudulently to pretend to convey its title to these lands, and in doing so to divide the same so that the amount held in each particular case, and conveyed to each particular vendee would be so small in value as to be below the jurisdiction of the said United States District Court, and therefore, and in pursuance of the said fraudulent plan and scheme to avoid the jurisdiction of the said United States District Court, did, [fol. 49] prior to the institution of the said suit and the filing of the bill in this case; pretend to convey the said lands away as follows: that is to say, did pretend to convey the N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of section 36, T. 2 S. R. 15 West to Anna F. C. Martin, and did at the same time, and as petitioner is advised and believes on the same date, pretend to convey to F. C. Martin, a portion of said lands to-wit: S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Sec. 36, T. 2 S. R. 15 West, and did at the same time and as petitioners are advised and believe on the same date, pretend and attempt to convey to Cecile Dowling, the S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Sec. T. 2 S. R. 15 West, and did at the same time and as petitioners are advised and believe on the same date, pretend to convey to D. W. Blake the S. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of said Section 36, T. 2 S. R. 15 West, the sole object of said pretended conveyances being to divide the said land so that the amount and holdings placed in the name of each particular vendee should be worth less than the sum of \$3,000.00, and thereby attempt to defeat the removal of the said controversies into the said District Court of the United States for the Southern Division of the Southern District of Mississippi.

The said petitions further charged that the said pretended conveyances were, and are simulated and pretended conveyances, that they were not conveyances, in fact and were never intended or designed to pass the title claimed by said vendor into the said vendees, the sole object being to place the record title in said vendees, leaving the equitable title and the real control thereof still in the said Southern Pine Company, which corporation has since said pretended conveyances and with the knowledge and consent of said vendees continued to claim and asset title thereto, to attempt to exercise acts of ownership thereover and sue to confirm its title thereto.

[fol. 50] The said petitions further charged that none of the said

vendees paid anything for the said conveyances, which were wholly voluntary, colorable and simulated, and that the said vendees and each of them held the naked legal title to said lands, that is to say whatever title the said Southern Pine Company had and could convey, in trust for, and for the benefit and use of the said Southern Pine Company, who is the equitable and beneficial owner thereof.

It was further — in the petitions that practically all of the stock of the said Southern Pine Company is owned by Eugene Martin, the President, who absolutely controls and dictates the policy and conduct of the said corporation; that F. C. Martin is the son of the said Eugene Martin; that Anna F. C. Martin is the wife of the said Eugene Martin; that D. W. Blake is the brother-in-law, or other near relative of the said Eugene Martin, and that Cecile Dowling is either an employee or clerk of the said corporation, or is otherwise wholly under the control thereof, insofar as the holding of the said lands, the legal title to which was ostensibly placed in her, is concerned. And the said vendees, and each vendees, and each of them, hold the legal title to said lands in trust for, and for the benefit of the said Southern Pine Company, which is the true, real and equitable owner of whatever claim may be set up and urged under the claim of title set up in Complainants' bill, solely for the purpose of defeating the removal of this cause into the United States District Court, and for no other purpose and as a trustee for the said Southern Pine Company.

Your complainants aver that thereafter each of the said suits or causes of action was by the said Wyatt Lumber Company, its predecessor in title, by proper order of the Chancery Court of Pearl River [fol. 51] County removed to the said United States District Court for the Southern Division of the Southern District of the State of Mississippi, and the record in each case was filed in the said District Court February 27th, 1912; and that thereafter the several plaintiffs in the said four suits appeared and each made motions to remand and to continue the same, and each of which said motions to continue was by the Court sustained, and the said causes continued, all as appears from the Minutes and Docket Entries of the said District Court of the United States, and to which reference is here made; and since the time of the said continuance no further step has been taken by the complainants in the said causes, or by either of them. Your complainants would further show that thereafter, and on February 26th, 1918, each of the said suits was dismissed in the said District Court under Equity Rule No. 57, as appears from the Docket Entries in said Court to which reference is likewise here made.

Your complainants would further show unto the Court, that up to the date of the filing of this bill, and since the order of continuance hereinabove referred to, and since the dismissal of the said four suits or causes in the United States District Court, the complainants therein, nor either of them, have taken no steps to prosecute or revive the same, and they have, therefore, in effect and to all intents and purposes, abandoned even any simulated or pretended claim to the said lands, and complainants aver and would show unto the Court that it has now been more than ten years since the filing of the said

suits, during all of which time the complainants therein have stood by and permitted these complainants and their predecessors in title to pay the taxes on the said lands, and to be and to remain in the active possession and control thereof; and your complainants aver that on account of the negligence and laches of the defendant herein [fol. 52] and his predecessors in title, they should not now be permitted to assert any right, title or interest in or to the said lands, or to interfere with your complainants, possession and control thereof; and your complainants would further show unto the Court that it has been more than ten years since the filing of the four said suits and since even a pretended right to bring an action as to these lands, or any part thereof, has first accrued to the defendant herein, or to some person through whom he claims, and complainants say that the right of the defendant herein or of any person to claim said lands through the said Southern Pine Company, or the said Martin, is now barred by the Statutes of the State of Mississippi.

Your complainants would further show unto the Court that not only is the defendant herein and their predecessors in title precluded by their negligence and laches and by the Statutes of the State of Mississippi from now asserting any right, title or interest in and to the said lands, or any part thereof, but they would further show unto the Court that the said lands, have for a period of more than ten years next preceeding the filing of this bill been in the open, visible, notorious, exclusive, hostile and continuous adverse possession of these complainants and their predecessors in title, claiming same against the whole world, during all of which period of time complainants and their predecessors in title, paid the taxes thereon and made such use and occupation of the said lands as the same were capable of.

Your complainants would respectfully show unto the Court that both they and their immediate and remote grantors bought the said land for a valuable consideration and in good faith, and upon a clean record title from the State of Mississippi on down to these [fol. 53] complainants, predicated upon a patent from the State of Mississippi antedating the patent upon which complainants are informed that the defendant herein is now asserting title to said land; that he and his said grantors are innocent purchasers for value as to the said land. Complainants further aver that the patent from the State of Mississippi to the said Pearl River Improvement and Navigation Company, upon which title is founded, constitutes a contract between the said Pearl River Improvement and Navigation Company and the said State of Mississippi, and upon which their title in and to the said land is founded; and they aver that they are now protected in their title to the said land by Article —, Section —, of the Constitution of the United States, which they now specifically plead.

Complainants are informed and believe, and therefore, charge that the defendant herein, although not the real, true and legal owner of the said land, and although he has not the right or title thereto, is asserting some claim and title, and pretending to have some right and interest in and to the said land, which your complainants aver

is wholly a pretended claim of title, and as such casts a doubt, cloud and suspicion upon the rightful ownership and real title and ownership of your complainants in and to said land, and which said alleged title complainants say is calculated to lessen and diminish and does actually lessen and diminish the value of said land to these complainants, and would and does prevent a sale thereof for the actual or real value of said property.

Your complainants would further show unto the Court that they were at the time of the institution of this suit and have been at all times since, and now are citizens of the State of Illinois, and that the defendant herein is, and has been at all times a citizen of the [fol. 54] State of Illinois, as aforesaid; that this is a suit of a civil nature of which this Court has original jurisdiction, and is a suit between citizens of the same state brought in another state; that the matter here in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand (\$3,000.00) dollars.

Wherefore, premises considered, complainants pray that the said defendant be summoned as required by law to appear before this Honorable Court at the next regular term thereof, to-wit, — —, 1922, there and then to plead, answer or demur to the allegations of this bill of complaint, and that he be required to set out in his answer all the particulars of her said pretended right or title in and to the said land, and that on a final hearing of this cause complainants pray that this Court will decree the said patent and the several deeds, instruments or minutes of pretended title relied upon by the defendant herein, may be each and all cancelled and held as naught, and that the defendant herein shall be perpetually enjoined from setting up or asserting any claim of title or interest in and to the said lands, adverse to the lawful claim and ownership of these complainants, and that these complainants may be decreed to be the sole and only real, true, legal and equitable owners of the said described lands. And complainants further pray that they may have such further and general relief as in equity and good conscience they are entitled to have.

And as in duty bound complainants will ever pray.

Davis, Wallace & Georges, T. J. Wills, Attorney- for Complainants.

[fol. 55] Jurat showing the foregoing was duly sworn to by T. J. Wills omitted in printing.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANT ANNA F. C. MARTIN

Comes the defendant, Anna F. C. Martin, by her Attorneys, and answering so much and such parts of the bill of complaint filed against her herein as she is advised it is material and necessary for her to make answer to, says:

[fol. 56] She denies that the complainant, Edward Hines Yellow Pine Trustees, are the real true, legal and equitable owners of the land described in the bill of complaint as the N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 36, Tp. 2, S. r. 15 West situated in the County of Pearl River, State of Mississippi, but admits that said land is now situated in that part of Pearl River County which was formerly a part of Marion County, State of Mississippi.

Defendant admits that said lands were donated to the State of Mississippi under and by virtue of an Act of Congress, approved September 28th, 1850, but denies that said lands were patented to the Pearl River Improvement & Navigation Company, in accordance with either an Act of the legislature of the State of Mississippi, approved on the 8th day of April, 1871, or any other Act of the Legislature; denies that a patent was ever issued by the State of Mississippi to the Pearl River Improvement & Navigation Company; denies that Pearl River Improvement & Navigation Company, for a valuable consideration, on November 20th, 1872, conveyed said lands to M. S. Baldwin denies that thereafter, on the 17th day of April, 1873, the said M. S. Baldwin, by his attorney in fact, Samuel Vose, for a valuable consideration conveyed said land to Israel Hall, by deed of record in Book 15, page 256; denies that Olivia B. Hall acquired title to said land by a last will and testament of her husband Israel Hall, and denies that the said Israel Hall left a last will and testament and that the said alleged will and testament was duly probated in all respects as required by law and named the said Olivia B. Hall as his sole legatee; denies that on July the 23, 1900, the said Olivia B. Hall, by quit claim deed, conveyed said land to Charlotte H. Eastman, and denies that said deed was in confirmation of a deed theretofore executed by the said Israel Hall to Charlotte H. Eastman, [fol. 57] wife of Sidney C. Eastman; denies that on May 13, 1904, M. S. Baldwin executed and delivered unto the said Charlotte H. Eastman a further deed to the said land ratifying and confirming a previous deed executed by Samuel Vose as attorney for the said Baldwin in April, 1873; denies that thereafter on the 5th day of July, 1915, for a valuable consideration, the said Charlotte H. Eastman, and Sidney A. Eastman, by warranty deed, conveyed the said lands to the Wyatt Lumber Company; denies that thereafter on January 1st, 1919, said Wyatt Lumber Company conveyed the same to Edward Hines, C. F. Wiehe, and L. L. Barth, trustees of the Edward Hines Yellow Pine Trustees, by quit claim deed or otherwise.

Defendant admits that she is asserting title in and to the said land by virtue of a patent which was issued by the State of Mississippi to Mose Mitchell on December 7th, 1883, and that the title vested in the said Mose Mitchell became, by successive conveyances, which will be more fully and particularly hereinafter set out, vested in this defendant.

Defendant denies that the lands involved in this suit are a part of the body of wild timbered lands granted by the State of Mississippi, under the Act of April 8th, 1871, to the Pearl River Improvement & Navigation Company, and denies that said lands came to complainants' predecessor in title from the same source and through

the same deraignment and concerning which there had been in years past, litigation between complainants' predecessor in title and the predecessor in title of the defendant. Defendant admits, however, that her predecessors in title to said lands have asserted title to said land under the patent from the State of Mississippi issued to Mose Mitchell, in the year 1883, which patent this defendant avers is a [fol. 58] valid patent, and the only valid patent ever issued by the State of Mississippi to said land.

Defendant admits that one of his predecessors in title was the Southern Pine Company, a corporation under the laws of Mississippi, domiciled in Vicksburg, Mississippi, and that Eugene Martin, deceased, was at one time president of the said Corporation. As to the allegations in said bill of complaint contained that said Eugene Martin was the dominant power and absolutely controlled the policies and actions of the said corporation and directed the action of the various predecessors in title of the defendant in conveying said property, this defendant has no information or knowledge concerning such allegations and is unable to admit or deny the same, but for the purpose of this suit, and in order to require strict proof of said allegations, defendant denies each and every said allegations and requires strict proof thereof by the complainant.

Defendant admits that it is true that there was a suit between the Southern Pine Company and Mrs. Olivia B. Hall, with reference to certain lands at that time being claimed by both said parties, but denies that said litigation was in the year 1905, and denies that the title of the land involved in said litigation was exactly similar to the title under which the defendant claims the land here in controversy. And defendant avers that the decision of the Circuit Court of Appeals and the Supreme Court of the United States in that case is **not** in any way controlling upon the Court in this case, for the reason that that case was tried and decided on an agreed statement of facts, in which agreed statement of facts it was expressly agreed that the bond required by the Act of March 27, 1871, was executed and filed by the Pearl River Improvement & Navigation Company, and approved by [fol. 59] the Governor of the State of Mississippi, while the defendant herein denies that said bond, which was a condition precedent to the issuance of the patent to the Pearl River Improvement & Navigation Company was ever executed, filed and approved by the Governor. Defendant further avers that the decision of the Circuit Court of Appeals in that cause is not controlling in this case, for the reason that the lands herein involved are neither on nor near Pearl River, and under the Constitution of the State of Mississippi of 1869, Section 6, Article 8 thereof, construed in the case of *Tynes vs. Southern Pine Co.*, 54 Southern, 885, the Legislature and officers of the State of Mississippi were prohibited from donating to anybody, for any purpose, swamp and overflowed lands granted to the State of Mississippi by an Act of Congress of 1850 not situated on Pearl River. And defendant denies that the lands involved in this suit were left out of the suit of the Southern Pine Company against Mrs. Olivia B. Hall by inadvertence or mistake.

Defendant admits that the Southern Pine Company, on the 29th day of September, 1910, filed in the Chancery Court of Pearl River County, Mississippi, against Wyatt Lumber Company, one of the alleged predecessors in title of complainants, in which suit Southern Pine Company dereigned its title to said land and prayed for a cancellation of the claim of title not then but now being asserted by complainants; and the defendant admits that said suit was removed to this Court and by this Court dismissed without prejudice. Defendant admits that on October 23, 1911, she filed a suit against the Wyatt Lumber Company, in the Chancery Court of Pearl River County, against the Wyatt Lumber Company, in which suit the said Anna F. C. Martin sought to remove the claim of title of the said [fol. 60] Wyatt Lumber Company as a cloud upon his title, and said suit, upon petition of the Wyatt Lumber Company, was removed to this Honorable Court. And in the petition for removal, various and sundry imaginary charges were made by the Wyatt Lumber Company of the effect that conveyances had been executed by the Southern Pine Company to prevent this Court from assuming jurisdiction of said cause of action, said charges in said petition of Wyatt Lumber Company being practically the same as the complainants have alleged them to be, but as the said Anna F. C. Martin denied these charges, and took issue thereon, and said suit was dismissed on February 28th, 1918, by this Court under Equity Rule No. 57, without said cause ever being tried on any of the issues there involved, and without the Court determining whether or not the imaginary allegations made by the Wyatt Lumber Company in its said petition were true, defendant now avers that what was alleged in that cause can have no bearing in this case, and is wholly superfluous and redundant matter; but if by setting out the allegations contained in the said suit by Anna F. C. Martin against the said Wyatt Lumber Company in 1911, which cause now stands dismissed under Equity Rule No. 57 of this Court, it is the intention and purpose of the complainant to re-aver the truth of the allegations in said petition contained, then this defendant denies each and every of said allegations in said petition contained, and defendant, denies that the land described in the bill of complaint was conveyed by the Southern Pine Company to Anna F. C. Martin for the purpose of preventing this Court from assuming jurisdiction in said cause; defendant further denies that the object of said conveyance from the Southern Pine Company to Anna F. C. Martin was for the purpose of dividing the said land so that the value of the land held by each [fol. 61] particular vendee would be less than the sum of \$3,000.00 and thereby defeat the removal of said controversies to this Court.

Defendant denies that said conveyances were simulated and pretended conveyances and that they were not in fact conveyances and were never intended to pass the title claimed by the said Southern Pine Company, predecessor in title, to this defendant, and denies that the equitable title to said land was left in the Southern Pine Company, and that said corporation has since said conveyances with the knowledge and consent of said vendees, continued to claim and assert title thereto, but on the contrary, defendant avers that the Southern

Pine Company has not owned or claimed to own the said land since the execution of its deed conveying said land to Anna F. C. Martin. Defendant denies that there was no consideration for *me* conveyance of said land by the Southern Pine Company to the said Anna F. C. Martin, and denies that said conveyance was wholly voluntarily and simulated and that said vendees and each of them, held only the legal title to said land. Defendant further denies each and every allegation of complainants that the defendant Anna F. C. Martin held the legal title to said land in trust for the benefit of the Southern Pine Company, and that said conveyance was made for the sole purpose of defeating the removal of said cause to the United States District Court. Defendant denies that she and her predecessors in title have abandoned all claim to said land, but avers that they have been claiming the title to said land at all times before and since the dismissal of the suit filed by the Southern Pine Company against the Wyatt Lumber Company, as will appear from the records of Pearl River County, Mississippi, and the dereignment of the title of defendant hereinafter set forth.

[fol. 62] Defendant admits that it has been more than ten years since the filing of said suits, but denies that she and her predecessors in title have permitted complainants and their predecessors in title to pay taxes on said land; denies that complainants and their predecessors in title have paid the taxes on said land; denies that she or her predecessors in title have permitted complainants to be and remain in the active possession and control thereof, but on the contrary defendant avers that she and her predecessors in title have paid the taxes on said land, except when complainants rushed in ahead of her and her predecessors in title and paid the taxes thereon. And defendant further avers that there has never been any actual possession and control of said land of any kind, by either the complainants and their predecessors in title, or by defendant and her predecessors in title.

Defendant denies that the failure of Anna F. C. Martin to prosecute her said cause of action against the Wyatt Lumber Company, and permitting the same to be dismissed under Equity Rule No. 57 of this Court, constitutes such negligence and laches as to bar this defendant and her predecessors in title from asserting their title by way of defense or otherwise against the pretended and simulated claim of title of complainants, and denies that she or her predecessors in title should be restrained from making defense to the bill of complaint filed herein by complainants; and defendant denies that it has been more than ten years since the right to bring an action as to these lands or any thereof, has first accrued to the defendant and here predecessors in title or some persons through whom she claims and denies that the right of the defendant herein to claim said lands through the Southern Pine Company, or the said Martins, is now barred by the statutes of limitations of the State of Mississippi. On the contrary defendant avers that the complainants have [fol. 63] never owned or had a valid title on which to base a claim of title to said land, and whatever title that they or their predeces-

sors in title have claimed to have amounts to no more than color of title and since complainants have never gone to the actual possession and control of said land, the statutes of limitations of the State of Mississippi have never been put into operation in favor of complainants and against defendant, and her predecessors in title. The defendant and her predecessors in title are, therefore, not barred by the statutes of limitations of the State of Mississippi from showing by way of defense to the suit instituted by the complainants against her that complainants are not the owners of said land and that he is the real owner thereof.

Defendant again denies that she or her predecessors in title are precluded from asserting title to said land by way of defense in this suit or otherwise, because said cause of action of Anna F. C. Marlin against Southern Pine Company was dismissed by this Court under Equity Rule No. 57 for want of prosecution; and this defendant especially denies that the said land has for a period of more than ten years next preceding the filing of this bill, been in the open, visible, notorious, exclusive, hostile and continuous adverse possession of complainants and their predecessors in title; denies that the said complainants and their predecessors in title have been claiming said lands against the world and denies that during all of said period of time, complainants and their predecessors in title have paid taxes thereon and made such use and occupation of the said lands as the same were capable of.

Defendant denies that complainants and their immediate and remote grantors bought said land for a valuable consideration and in [fol. 64] good faith; denies that they have a clear title from the State of Mississippi predicated upon a patent antedating the patent upon which the defendant is asserting title to said land. Defendant denies that the alleged patent from the State of Mississippi to the Pearl River Improvement & Navigation Company, upon which the title to complainants is founded, constitutes a contract between the Pearl River Improvement & Navigation Company, and the State of Mississippi and that said complainants are protected in their title to said land by Article —, Section —, of the Constitution of the United States. On the *controversy*, defendant avers that said pretended patent was without consideration, and an attempted donation in violation — Section 6, Article 8 of the Constitution of the State of Mississippi of 1869. Defendant admits that she is asserting title to and claiming to own said land, but denies that it is a pretended claim of title, and denies that it casts a doubt, cloud or suspicion on complainants' claim of title, on the contrary defendant avers that her title is the true, legal and equitable title to said lands and that the claim of title of complainants to said land casts a cloud, doubt and suspicion on her title. Defendant denies that this is a suit of civil nature of which this Court has original jurisdiction, and denies that the land in controversy exceeds, exclusive of interest and cost the sum or value of \$3,000.00.

Defendant avers that the true, legal and equitable title to said land is vested in her and defendant dereigns the title under which she claims to be the true owner of said land, as follows:

(1) By an Act of Congress approved September 28th, 1850, said land was granted by the United States to the State of Mississippi and [fol. 65] thereafter said land was patented to the State of Mississippi by the United States, pursuant to the provisions of said Act of Congress.

(2) The State of Mississippi, in consideration of the sum of \$—, sold said land to Moses Mitchell, and on December 7th, 1883, issued its patent therefor to the said Moses Mitchell, which patent is of record in the land Deed Records of Pearl River County, Mississippi, Book 5, page 166.

(3) The said Moses Mitchell, for a valuable consideration, on December 27th, conveyed said land to S. L. Woolridge by a deed bearing that date and of record in Book 5 page 204 of the Land Deed Records of Pearl River County, Mississippi.

(4) That said S. L. Woolridge, for a valuable consideration on January 23, 1885, sold and conveyed said land to Eugene Martin, by a deed bearing that date of record in Land Book 5, page 219 of the Land Deed Record of Pearl River County, Mississippi.

(5) That the said Eugene Martin, for a valuable consideration on January 23rd, 1885, sold and conveyed said land to J. G. Barrett by a deed bearing that date, and of record in Land Book 5, page 223 of the Land Deed Records of Pearl River County, Mississippi.

(6) That the said J. G. Barrett, for a valuable consideration, on July 21st, 1888, sold and conveyed said lands to Henry Clifton Rodes by a deed bearing that date and of record in Book 6, page 5 of the Land Records of Pearl River County, Mississippi.

[fol. 66] (7) That the said Henry Clifton Rodes, for a valuable consideration, on August 6th, 1889, sold and conveyed said land to the Southern Pine Company by a deed bearing that date and of record in Book 6, page 42 of the Land Deed Records of Pearl River County, Mississippi.

(8) That the Southern Pine Company, for a valuable consideration, on the 26th day of January, 1919, sold and conveyed said land to Anna F. C. Martin, by a deed bearing that date and of record in the Pearl River County, Mississippi, Book 15, page 286.

Defendant further avers that by Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, a common school fund was established to consist of the proceeds of the sale of all swamp and overflowed lands granted to the State under Act of Congress approved September 28, 1850, "except the swamp lands lying and situated on Pearl River, in the Counties of Hancock, Marion, Lawrence, Simpson and Copiah:" and that at the time of the enactment of said Act of March 27th, 1871, attempting to grant, and authorize the issuance of a patent to the land described in the bill of complaint to the Pearl River Improvement & Navigation Company, the predecessor in title of complainants, and at the time of the issuance

of the said pretended patent to the said Pearl River Improvement & Navigation Company, under said Act of March 27, 1871, the said Section 6, Article 8 of the Constitution of the State of Mississippi was in full force and effect and the Act of the Secretary of State and Governor in attempting to issue a patent to the said Pearl River Improvement & Navigation Company, conveying said land described [fol. 67] in the bill of complaint, was in plain violation of said Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, and were utterly void and vested no title whatever in the said Pearl River Improvement & Navigation Company, the predecessors in title of complainants, for the reason as defendant avers, that said land is neither on nor near Pearl River, but is remotely situated from Pearl River and is more than eighteen miles East of Pearl River and lies East of the range of hills that divides the watershed of Pearl River from that of Wolf River, and actually lies East of Wolf River, and upon a tributary of Wolf River running into Wolf River from the East. Defendant further avers that said drains into Wolf River and many miles of space of territory intervenes between the Western edge of the above described lands and the most Eastern edge of any of the swamp and overflowed lands donated to the State, under Act of Congress of September 28th, 1850, that lie either on Pearl River or within the watershed of Pearl River; so that said lands neither lie in the valley of Pearl River nor are they contiguous to any swamp and overflowed lands granted to the State by said Act of Congress, which do lie in the valley or watershed of Pearl River. And so it is, defendant avers, that the lands described in the bill of complaint was never conveyed to the Pearl River Improvement & Navigation Company, by said patent alleged by complainants to have been issued to the said Pearl River Improvement & Navigation Company, under the Act of March 27th, 1871, and the said pretended patent to the Pearl River Improvement & Navigation Company is illegal and void for the reason that said attempted conveyances to the Pearl River Improvement & Navigation Company, by the officers of the State of Mississippi, under Act of March 27, [fol. 68] 1871, was in violation of Section 6, Article 8 of the Constitution of the State of Mississippi of 1869.

Defendant further avers that the Supreme Court of the State of Mississippi, in the case of Tynes vs. Southern Pine Company, reported in 54 southern — page 885, in construing a patent to swamp and overflowed lands not located on Pearl River, and issued to the Pearl River Improvement & Navigation Company, under said Act of March 27, 1871, creating the Pearl River Improvement & Navigation Company, held that said patent was void and conveyed no title to the said Pearl River Improvement & Navigation Company for the reason that said land attempted to be conveyed by said patent was not on Pearl River and the Legislature of the State of Mississippi was prohibited by Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, (or 1868) from donating to anybody for any purpose swamp and overflowed lands not situated on Pearl River; that the Supreme Court of the State of Mississippi, in

the case of *Hardy vs. Hartman*, reported in Volume 4, Southern Reporter, page 545, and also in (73 Southern Reporter, page 798) the case of *Becker vs. Bank of Columbia* held that all patents issued to the Pearl River Improvement & Navigation Company under said Act of March 27, 1871, are void for the reason that said company did not comply with the condition precedent in said act that it should execute and file the bond therein provided. The Supreme Court of the State of Mississippi, in the case of *Becker vs. Bank of Columbia*, supra, further held that the decision in the case of *Hardy vs. Hartman*, supra, had become a rule of property in the State of Mississippi, and that all parties acquiring property in the State of Mississippi had a right to rely on the law as declared by the decision of the Court of last resort of the State of Mississippi.

[fol. 69] Defendant further avers that said Act of 1871, by which said company was created, did not divest the State of title to said land; but, on the contrary, it expressly provided that before patents to said land could be issued by the State to said Company that a bond in the sum of \$50,000.00 would be executed by said company, filed in the office of the Secretary of State and approved by the Governor, and the execution, filing and approval of said bond was made by the act a condition precedent to the patents being issued to said Company. And since the complainants neither allege nor claim that said bond was executed, filed and approved as required by said act, the patent under which they claim to own said land is absolutely and utterly void.

Defendant further avers that if this Court should hold that the land here involved is on Pearl River within the meaning of the Act of March 27th, 1871, creating the Pearl River Improvement & Navigation Company, then said lands were granted to the Board of Commissioners of the Southern District of Pearl River, by an Act of the Legislature of the State of Mississippi of March 12, 1852, which act expressly granted to the Board of Commissioners of the Southern District of Pearl River, all of swamp and overflowed lands, lying and situated on Pearl River, in the counties of Hancock, Marion, Lawrence, Copiah and Simpson, and included in the grant of such lands made by Act of Congress of September 28, 1850, to the State of Mississippi. Defendant further avers that said counties named in said act appointed the Commissioners therein provided for and said Commissioners appointed a Treasurer as by said act provided. Defendant further avers that said land was at the time of the enactment of March 12, 1852, located in Marion County, but said land is now located in Pearl River County.

[fol. 70] So defendant avers that if said land could be held to be land lying and situated on Pearl River, then the title to said land by virtue of the Act of March 12, 1852, passed to the Board of commissioners of the Southern District of Pearl River for the benefit of the counties therein named, and said counties had a vested right in said land at the time the legislature by said Act of March 27, 1871, attempted to grant the same to the Pearl River Improvement & Navigation Company, and there was no authority in the Legislature of the

State of Mississippi to grant said land by the Act of March 27, 1871, to the Pearl River Improvement & Navigation Company and no right in the Legislature of the State of Mississippi to impair the right of said counties to said land which became vested in said counties by the Act of March 12, 1852. And so it is defendant avers that if said lands are held to be lands on Pearl River, then the patent to the Pearl River Improvement & Navigation Company, under which complainants claim to own said land, is void for the reason that said title to said land was not in the State of Mississippi on March 27, 1871, and there was no authority in the Legislature to grant to the Pearl River Improvement & Navigation Company or any one else.

Defendant further avers that the complainants and their predecessors in title have known for more than forty years that the title under which they claim is utterly and absolutely void and that they have no title to said land, and during all of said years they have made no assertions of their claim of title in any way. And they well know that they could not secure a decree in any Court of the State of Mississippi upholding the validity of their claim or title, and cancelling the title of defendant. Yet in defiance of the [fol. 71] repeated decisions of the Supreme Court of the State of Mississippi that all titles of the kind under which they claim to own said land are utterly and totally void, they are now attempting to assert said invalid title in this Court. And defendant avers that they filed said suit in this Court in an effort to avoid the effect of the decisions of the Supreme Court of the State of Mississippi, and in the hope that this Court would refuse to follow the decisions of the Supreme Court of the State of Mississippi, which Court, above all others, has the right to construe the statutes of its own state.

Defendant further avers that the matter, or land, in controversy, exclusive of interest and costs, does not exceed the sum of \$3,000.00, but the value of said land is much less than \$3,000.00, and this Court should refuse to take jurisdiction of this cause.

And now having fully answered all of the allegations of the bill of complaint filed herein against her, or so much and such parts thereof as she is advised that it is material or necessary for her to make answer to, defendant prays that she may be dismissed with her reasonable costs, etc.

Anna F. C. Martin, Defendant. Hathorn & Williams,
Solicitors for Defendant.

Jurat showing the foregoing was duly sworn to by E. B. Williams omitted in printing.

[fol. 72]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF FRANCIS C. MARTIN

Comes the defendant, Francis Co. Martin, by his attorneys and answering so much and such parts of the bill of complaint filed against him herein as he is advised it is material and necessary for him to make answer to, says:

He denies that the complainant-, Edward Hines Yellow Pine Trustees, are the real, true, legal and equitable owners of the land described in the bill of complaint as the S. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 36, Tp. 2 S. R. 15 West situated in the County of Pearl River, State of Mississippi, but admits that said land is now situated in that part of Pearl River County which was formerly a part of Marion County, State of Mississippi.

Defendant admits that said lands were donated to the State of Mississippi under and by virtue of an Act of Congress, approved [fol. 73] September 28th, 1850, but denies that said lands were patented to the Pearl River Improvement & Navigation Company, in accordance with either an Act of the Legislature of the State of Mississippi, approved on the 8th day of April, 1871, or any other Act of the Legislature; denies that a patent was ever issued by the State of Mississippi, to the Pearl River Improvement & Navigation Company; denies that Pearl River Improvement Company, for a valuable consideration, on November 20th, 1872, conveyed said lands to M. S. Baldwin; denies that thereafter on the 17th day of April 1873, to the said M. S. Baldwin, by his attorney in fact, Samuel Vose, for a valuable consideration conveyed said land to Israel Hall, by deed of record in Book 15, page 256; denies that Olivia B. Hall acquired title to said land by a last will and testament of her husband, Israel Hall, and denies that the said Israel Hall left a last will and testament and that said alleged will and testament was duly probated in all respects as required by law and named the said Olivia B. Hall as his sole legatee; denies that on July 23, 1900, the said Olivia B. Hall, by quit claim deed, conveyed said land to Charlotte R. Eastman, and denies that said deed was in confirmation of a deed theretofore executed by the said Israel Hall to Charlotte H. Eastman, wife of Sidney C. Eastman; denies that on May 13, 1904, M. S. Baldwin executed and delivered unto the said Charlotte H. Eastman a further deed to the said land ratifying and confirming a previous deed executed by Samuel Vose as attorney for the said Baldwin in April, 1873; denies that thereafter on the 5th day of July, 1915, for a valuable consideration, the said Charlotte H. Eastman, and Sidney C. Eastman, by warranty deed, conveyed the said lands to the Wyatt Lumber Company; denies that thereafter [fol. 74] on January 1st, 1919, said Wyatt Lumber Company conveyed the same to the Edward Hines, C. F. Eiche, and L. L. Barth, trustees of the Edward Hines Yellow Pine Trustees, by quit claim deed or otherwise.

Defendant admits that he is asserting title in and to the said land by virtue of a patent which was issued by the State of Mississippi to Mose Mitchell on December 7th, 1883, and that the title vested in the said Mose Mitchell became, by successive conveyances, which will be more fully and particularly hereinafter set out, vested in this defendant.

Defendant denies that lands involved in this suit are a part of the body of wild timbered lands granted by the State of Mississippi, under the Act of April 8th, 1871, to the Pearl River Improvement & Navigation Company, and denies that said lands came to complainants' predecessor in title from the same source and through the same dereliction and concerning which there has been in years past, litigation between complainants' predecessor in title and the predecessor in title of the defendant. Defendant admits, however, that his predecessors in title to said lands have asserted title to said land under the patent from the State of Mississippi issued to Mose Mitchell, in the year 1883, which patent this defendant avers is a valid patent, and the only valid patent ever issued by the State of Mississippi to said land.

Defendant admits that one of his predecessors in title was the Southern Pine Company, a corporation under the laws of Mississippi, domiciled in Vicksburg, Mississippi, and that Eugene Martin, deceased, was at one time president of the said Corporation. As to the allegations in said bill of complaint contained that said Eugene Martin was the dominant power and absolutely controlled the policy [fol. 75] and actions of the said corporation and directed the action of the various predecessors in title of the defendant in conveying said property, this defendant has no information or knowledge concerning such allegations and is unable to admit or deny the same but for the purpose of this suit, and in order to require strict proof of said allegations, defendant denies each and every of said allegations and requires strict proof thereof by the complainant.

Defendant admits that it is true that there was a suit between the Southern Pine Company and Mrs. Olivia B. Hall, with reference to certain lands at that time being claimed by both said parties, but denies that said litigation was in the year 1905, and denies that the title of the land involved in said litigation was exactly similar to the title under which the defendant claims the land here in controversy. And defendant avers that the decision of the Circuit Court of Appeals and the Supreme Court of the United States in that case is not in any way controlling upon the Court in this case, for the reason that the case was tried and decided on an agreed statement of facts, in which agreed statement of facts it was expressly agreed that the bond required by the Act of March 27, 1871, was executed and filed by the Pearl River Improvement & Navigation Company and approved by the Governor of the State of Mississippi, while the defendant herein denies that said bond, which was a condition precedent to the issuance of the patent to the Pearl River Improvement & Navigation Company was ever executed, filed and approved by the Governor. Defendant further avers that the decision of the Circuit Court of Appeals in that cause is not controlling in this case,

for the reason that the lands here involved are neither on nor near Pear River, and under the Constitution of the State of Mississippi of [fol. 76] 1869, Article 8 thereof, construed in the case of *Tynes vs. Southern Pine Co.*, 54, Southern, 885, the Legislature and officers of the State of Mississippi were prohibited from donating to anybody, for any purpose, swamp and overflowed lands granted to the State of Mississippi by an Act of Congress of 1850 not situated on Pearl River. And defendant denies that the lands involved in this suit were left out of the suit of the Southern Pine Company against Mrs. Olivia B. Hall by inadvertence or mistake.

Defendant admits that the Southern Pine Company on the 29th day of September, 1910, — suit in the Chancery Court of Pearl River County, Mississippi, against Wyatt Lumber Company, one of the alleged predecessors in title of complainants, in which suit Southern Pine Company dereigned its title to said land and prayed for a cancellation of the claim of title not then but now being asserted by complainants; and defendant admits that said suit was removed to this Court and by this Court dismissed without prejudice. Defendant admits that on October 23, 1911, he filed a suit in the Chancery Court of Pearl River County, against the Wyatt Lumber Company, in which suit, the said Francis C. Martin sought to remove the claim of title of the said Wyatt Lumber Company as a cloud upon his title, and said suit, upon petition of the Wyatt Lumber Company was removed to this Honorable Court. And in the petition for removal, various and sundry imaginary charges were made by the Wyatt Lumber Company to the effect that conveyances had been executed by the Southern Pine Company to prevent this Court from assuming jurisdiction of said cause of action, said charges in said petition of Wyatt Lumber Company being practically the same as the complainants have alleged them to be, but as the said Francis C. Martin [fol. 77] denied these charges, and took issue thereon, and said suit was dismissed on February 28th, 1918, by this Court under Equity Rule No. 57, without said cause ever being tried on any of the issues there involved, and without the Court determining whether or not the imaginary allegations made by the Wyatt Lumber Company in its said petition were true, defendant now avers that what was alleged in that cause can have no bearing in this case, and is wholly superfluous and redundant matter; but if by setting out the allegations contained in the said suit by Francis C. Martin against the said Wyatt Lumber Company in 1911, which cause now stands dismissed under Equity Rule No. 57 of this Court, it is the intention and purpose of the complainant to re-aver the truth of the allegations in said petitions contained, then this defendant denies each and every of said allegations in said petition contained, and defendant denies that the land described in the bill of complaint was conveyed by the Southern Pine Company to Francis C. Martin, for purpose of preventing this Court from assuming jurisdiction in said cause; defendant further denies that the sole object of said conveyance from the Southern Pine Company to Francis C. Martin was for the purpose of dividing the said land so that the value of the land held by

each particular vendee would be less than the sum of \$3,000.00 and thereby defeat the removal of said controversies to this Court.

Defendant denies that said conveyances were simulated and pretended conveyances and that they were not in fact conveyances and were never intended to pass the title claimed by the said Southern Pine Company, predecessor in title, to this defendant, and denies that the equitable title to said land was left in the Southern Pine Company, and that said corporation has since said conveyance, with [fol. 78] the knowledge and consent of said vendees, continued to claim and assert title thereto, but on the contrary defendant avers that the Southern Pine Company has not owned or claimed to own the said land since the execution of its deed conveying said land to Francis C. Martin. Defendant denies that there was no consideration for the conveyance of said land by the Southern Pine Company to the said Francis C. Martin, and denies that said conveyance was wholly voluntary and simulated and that said vendees and each of them, held only the legal title to said land. Defendant further denies each and every allegation of complainants that the defendant, Francis C. Martin, held the legal title to said land in trust for the benefit of the Southern Pine Company, and that said conveyance was made for the sole purpose of defeating the removal of said cause to the United States Court. Defendant denies that he and predecessors in title have abandoned all claim to said land, but avers that they have been claiming the title to said land at all times before and since the dismissal of the suit filed by the Southern Pine Company against Wyatt Lumber Company, as will appear from the records of Pearl River County, Mississippi, and the dereignment of the title of defendant hereinafter set forth.

Defendant admits that it has been more than ten years since the filing of said suits, but denies that he and his predecessors in title have permitted complainants and their predecessors in title to pay taxes on said land; denies that complainants and their predecessors in title have paid the taxes on said land; denies that he or his predecessors in title have permitted complainants to be and remain in the active possession and control thereof, but on the contrary, defendant avers that he and his predecessors in title have paid the taxes on said [fol. 79] land, except when complainants rushed in ahead of him and his predecessors in title and paid the taxes thereon. And defendant further avers that there has never been any actual possession and control of said land of any kind, by either the complainants and their predecessors in title, or defendant and his predecessors in title. Defendant denies that the failure of Francis C. Martin to prosecute his said cause of action against the Wyatt Lumber Company, and permitting the same to be dismissed under Equity Rule No. 57 of this Court, constitutes such negligence and laches as to bar this defendant and his predecessors in title from asserting their title by way of defense or otherwise against the pretended and simulated claim of title of complainants, and denies that he or his predecessors in title should be restrained from making defense to the bill of complaint filed herein by complainants; and defendant denies that it has been more than ten years since the right to bring

an action as to these lands or any part thereof, has first accrued to the defendant and his predecessors in title or some persons through whom he claims and denies that the right of the defendant herein to claim said lands through the Southern Pine Company, or the said Martin, is now barred by the statutes of limitations of the State of Mississippi. On the contrary defendant avers that the complainants have never owned or had a valid title on which to base a claim of title to said land, and whatever title they or their predecessors in title have claimed to have amounts to no more than color of title and since complainants have never gone into the actual possession and control of said land, the statutes of limitations of the State of Mississippi have never been put into operation of complainants and against defendant, and his predecessors in title. The defendant and [fol. 80] his predecessors in title are, therefore, not barred by the statutes of limitations of the State of Mississippi from showing by way of defense to the suit instituted by the complainants against him, that complainants are not the owners of said land and that he is the real owner thereof.

Defendant again denies that he or his predecessors in title are precluded from asserting title to said land by way of defense in this suit or otherwise, because said cause of action of Francis C. Martin against Southern Pine Company was dismissed by this Court under Equity Rule No. 57, for want of prosecution; and this defendant especially denies that the said land has for a period of more than ten years next preceding the filing of this bill, been in the open, visible, notorious, exclusive, hostile and continuous adverse possession of complainants and their predecessors in title; denies that the said complainants and their predecessors in title have been claiming said lands against the world and denies that during all of said period of time, complainants and their predecessors in title have paid taxes thereon and made such use and occupation of the said lands as the same were capable of.

Defendant denies that complainants and their immediate and remote grantors bought said land for a valuable consideration and in good faith; denies that they — a clear record title from the State of Mississippi predicated upon a patent antedating the patent upon which the defendant is asserting title to said land.

Defendant denies that the alleged patent from the State of Mississippi to the Pearl River Improvement & Navigation Company, upon which the title to complainants is founded, constitutes a contract between the Pearl River Improvement & Navigation Company, [fol. 81] and the State of Mississippi, and that said complainants are protected in their title to said land by Article — Section — of the Constitution of the United States. On the contrary, defendant avers that said pretended patent was without consideration, and an attempted donation in violation of Section 6, Article 8 of the Constitution of the State of Mississippi, 1869. Defendant admits that he and his successor in title have been asserting title to and claiming to own said land, but denies that it is a pretended claim of title, and denies that it casts a doubt, cloud or suspicion on complainants' claim of title, on the contrary, defendant avers that his title now vested in

his successor in title is the true, legal and equitable title to said lands, and that the claim of title of complainants to said land casts a cloud, doubt and suspicion on the title of his successor. Defendant denies that this is a suit of civil nature of which this Court has original jurisdiction, and denies that the land in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000.00.

Defendant avers that the true, legal and equitable title to said land is vested in him and defendant dereigns the title under which he claimed to be the owner of said land as follows:

(1) By an Act of Congress approved September 28th, 1850, said land was granted by the United States to the State of Mississippi, and thereafter said land was patented to the State of Mississippi by the United States, pursuant to the provisions of said Act.

(2) The State of Mississippi, in consideration of the sum of \$—, sold said land to Mose Mitchell, and on December 7th, 1883, [fol. 82] issued its patent therefor to the Said Mose Mitchell, which patent is of record in the Land Deed Records of Pearl River County, Mississippi, Book 5, page 166.

(3) The said Mose Mitchell, for a valuable consideration, on December 27th, 1883, conveyed said land to S. L. Woolridge by a deed bearing that date and of record in Book 5, page 204, of the Land Deed Records of Pearl River County, Mississippi.

(4) That said C. L. Woolridge, for a valuable consideration on January 23, 1885, sold and conveyed said land to Eugene Martin, by a deed bearing that date and of record in Land Deed Book 5, page 219 of the Land Deed Records of Pearl River County, Mississippi.

(5) That the said Eugene Martin, for a valuable consideration on January 23rd, 1885, sold and conveyed said land to J. G. Barrett by a deed bearing that date, and of record in land Deed Book 5, page 223 of the Land Deed Records of Pearl River County, Mississippi.

(6) That the said J. G. Barrett, for a valuable consideration, on July 21st, 1888, sold and conveyed said lands to Henry Clifton Rodes by a deed bearing that date and of record in Book 6, page 5 of the Land Deed Records of Pearl River County, Mississippi.

(7) That the said Henry Clifton Rodes, for a valuable consideration, on August 6th, 1889, sold and conveyed said land to the Southern Pine Company by a deed bearing that date and of record in Book 6, page 42 of the Land Deed Records of Pearl River County, Mississippi.

[fol. 83] (8) That the Southern Pine Company, for a valuable consideration, on the 26th day of January, 1909, sold and conveyed said land to Francis C. Martin, by a deed bearing that date and of record in the Land Deed Records of Pearl River County, Mississippi, Book 15, page 285.

Defendant further avers that by Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, a common school fund

was established to consist of the proceeds of the sale of all swamp and overflowed lands granted to the State under Act of Congress approved September 28, 1850, "Except the swamp lands lying and situated on Pearl River, in the Counties of Hancock, Marion, Lawrence, Simpson and Copiah"; and that the time of the enactment of said Act of March 27th, 1871, attempting to grant, and authorize the issuance of a patent to the land described in the bill of complaint to the Pearl River Improvement & Navigation Company, the predecessor in title of complainants, and at the time of the issuance of the said pretended patent to the said Pearl River Improvement & Navigation Company, under said Act of March 27, 1871, the said Section 6, Article 8 of the Constitution of the State of Mississippi was in full force and effect and the Act of the Secretary of State and Governor in attempting to issue a patent to the said Pearl River Improvement & Navigation Company, conveying said land described in the bill of complaint, was in plain violation of said Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, and were utterly void and vested no title whatever in the said Pearl — Improvement & Navigation Company, the predecessors in title of complainants, for the reason as defendant avers, that said land is [fol. 84] neither on nor near Pearl River, but is remotely situated from Pearl River and is more than eighteen miles east of Pearl River and lies east of the range of hills that divides the watershed of Pearl River, and actually lies east of Wolf River, and upon a tributary of Wolf River running into Wolf River from the east. Defendant further avers that said land drains into Wolf River and many miles of space of territory intervenes between the Western edge of the above described lands and the most eastern edge of any of the swamp and overflowed lands donated to the State, under Act of Congress of September 28th 1850, that, lie either on Pearl River or within the watershed of Pearl River so that said lands neither lie in the valley of Pearl River nor — they contiguous to any swamp and overflowed lands granted to the State by said Act of Congress, which do lie in the valley or watershed of Pearl River. And so it is, defendant avers, that the lands described in the bill of complaint *was* never conveyed to the Pearl River Improvement & Navigation Company, by said patent alleged by complainants to have been issued to the said Pearl River Improvement & Navigation Company, under the Act of March 27th, 1871, and that said pretended patent to the Pearl River Improvement & Navigation Company is illegal and void for the reason that said attempted conveyance to the Pearl River Improvement & Navigation Company by the officers of the State of Mississippi, under Act of March 27, 1871, was in violation of Section 6, Article 8 of the Constitution of the State of Mississippi of 1869.

Defendant further avers that the Supreme Court of the State of Mississippi, in the case of Tynes vs. Southern Pine Company, reported in 54 Southern — page 885, in construing a patent to swamp and overflowed lands not located on Pearl River, and issued to the [fol. 85] Pearl River Improvement & Navigation Company, under said Act of March 27th, 1871, creating the Pearl River Improvement & Navigation Company, held that said patent was void and conveyed no title to the said Pearl River Improvement & Navigation

Company for the reason that said land attempted to be conveyed by said patent was not on Pearl River and the legislature of the State of Mississippi was prohibited by Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, (or (1868) from donating to anybody for any purpose swamp and overflowed lands not situated on Pearl River; that the Supreme Court of the State of Mississippi, in the case of Hardy vs. Hartman, reported in Volume 4, Southern Reporter, page 545, and also in (73 Southern Reporter, page 798) the case of Becker vs. Bank of Columbia, held that all patents issued to the Pearl River Improvement & Navigation Company under said Act of March 27, 1871, are void for the reason that said company did not comply with the condition precedent in said Act that it should execute and file the bond therein provided. The Supreme Court of the State of Mississippi, in the case of Becker vs. Bank of Columbia, *supra*, further held that the decision in the case of Hardy vs. Hartman, *supra* had become a rule of property in the State of Mississippi, and that all parties acquiring property in the State of Mississippi had a right to rely on the law as declared by the decision of the Court of last resort of the State of Mississippi.

Defendant further avers that said *said* Act of 1871, by which said Company was created, did not divest the State of title to said land; but, on the contrary, it expressly provided that before patents to said land could be issued by the State to said Company that a bond in the sum of \$50,000.00 would be executed by said company, filed in the [fol. 86] office of the Secretary of State and approved by the Governor, and the execution, filing and approval of said bond was made by the Act a condition precedent to the patents being issued to said company. And since the Complainants neither allege nor claim that said bond was executed, filed and approved as required by said Act, the patent under which they claim to own said land is absolutely and utterly void.

Defendant further avers that if this Court should hold that the land here involved is on Pearl River within the meaning of the Act of March 27th, 1871, creating the Pearl River Improvement & Navigation Company, then said lands were granted to the Board of Commissioners of the Southern District of Pearl River, by an Act of the Legislature of the State of Mississippi of March 12, 1852, which act expressly granted to the Board of Commissioners of the Southern District of Pearl River, all of the swamp and overflowed lands, lying and situated on Pearl River, in the Counties of Marion, Lawrence, Copiah, and Simpson, and included in the grant of such lands made by Act of Congress of September 28th, 1850, to the State of Mississippi. Defendant further avers that said counties named in said act appointed the Commissioners therein provided for and said Commissioners appointed a Treasurer as by said Act provided. Defendant further avers that said land was at the time of the enactment of March 12, 1852, located in Marion County, but said land is now located in Pearl River County.

So defendant avers that if said land could be held to be land lying and situated on Pearl River, then the title to said land by virtue of the Act of March 12, 1852, passed to the Board of Commissioners of

the Southern District of Pearl River for the benefit of the counties [fol. 87] therein named, and said counties had a vested right in said land at the time the Legislature by said Act of March 27, 1871, attempted to grant the same to the Pearl River Improvement & Navigation Company, and there was no authority in the Legislature of the State of Mississippi to grant said land by the Act of March 27, 1871, to the Pearl River Improvement & Navigation Company and no right in the Legislature of the State of Mississippi to impair the right of the said counties to said land which became vested in said counties by the Act of March 12, 1852. And so it is defendant avers that if said lands are held to be lands on Pearl River, then the patent to the Pearl River Improvement & Navigation Company, under which complainants claim to own said land, is void for the reason that said title to said land was not in the State of Mississippi on March 27, 1871, and there was no authority in the Legislature to grant said lands to the Pearl River Improvement & Navigation Company or any one else.

Defendant further avers that the complainants and their predecessors in title have known for more than forty years that the title under which they claim is utterly and absolutely void and that they have no title to said land, and during all of said years they have made no assertion of their claim of title in any way. And they well know that they could not secure a decree in any Court of the State of Mississippi upholding the validity of their claim of title, and cancelling the title of defendant. Yet in defiance of the repeated decisions of the Supreme Court of the State of Mississippi that all titles of the kind under which they claim to own said land are utterly and totally void they are now attempting to assert said invalid title in this Court. And defendant avers that they filed said suit in this Court in an effort to avoid the effect of the decisions of the Supreme Court of the State [fol. 88] of Mississippi and in the hope that this Court would refuse to follow the decisions of the Supreme Court of the State of Mississippi, which Court above all others has the right to construe the statutes of its own state.

Defendant further avers that the matter, or land, in controversy, exclusive of interests and costs, does not exceed the sum of \$3,000.00 but the value of said land is much less than \$3,000.00, and this Court should refuse to take jurisdiction of this cause.

And now having fully answered all of the allegations of the bill of complaint filed herein against him, or so much and such parts thereof as he is advised, that it is material or necessary for him to make answer to, defendant prays that he may be dismissed with his reasonable costs, etc.

Francis C. Martin, Defendant. Hathorn & Williams, Solicitors for Defendant.

Jurat showing the foregoing was duly sworn to by E. B. Williams omitted in printing.

[Title omitted]

ANSWER OF H. P. LEWIS

Comes the defendant, H. P. Lewis, by his attorneys, and answering so much and such parts of the bill of complaint filed against him herein as he is advised it is material and necessary for him to make answer to, says:

He denies that the complainant-, Edward Hines Yellow Pine Trustees, are the real, true, legal and equitable owners of the land described in the bill of complaint as the S. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Section 36, Tp. 2 S. R. 15 West, situated in the county of Pearl River, State of Mississippi, but admits that said land is now situated in that part of Pearl River County which was formerly a part of Marion County, State of Mississippi.

Defendant admits that said lands were donated to the State of Mississippi under and by virtue of an Act of Congress, approved September 28th, 1850, but denies that said lands were patented to the Pearl River Improvement & Navigation Co., in accordance with either an Act of the Legislature of the State of Mississippi, approved on the 8th day of April, 1871, or any other Act of the Legislature; denies that a patent was ever issued by the State of Mississippi to the Pearl River Improvement & Navigation Co. denies that Pearl River Improvement & Navigation Co., for a valuable consideration, on November 20th, 1872, conveyed said lands to M. S. Baldwin; denies that thereafter, on the 17th day of April, 1873, the said M. S. Baldwin, by his attorney in fact, Samuel Vose, for a valuable consideration, conveyed said land to Israel Hall, by deed [fol. 90] of record in Book 15, page 256; denies that Olivia B. Hall acquired title to said land by a last will and testament of her husband, Israel Hall, and denies that the said Israel Hall left a last will and testament and that said alleged will and testament was duly probated in all respects as required by law and named the said Olivia B. Hall as his sole legatee; denies that on July 23, 1900, the said Olivia B. Hall, — quit claim deed, conveyed the said land to Charlotte H. Eastman, and denies that said deed was in confirmation of a deed theretofore executed by the said Israel Hall to Charlotte H. Eastman, wife of Sidney C. Eastman; denies that on May 13th, 1904, M. S. Baldwin executed and delivered unto the said Charlotte H. Eastman a further deed to the said land ratifying and confirming a previous deed executed by Samuel Vose as attorney for the said Baldwin in April, 1873; denies that thereafter on the 5th day of July, 1915, for a valuable consideration, the said Charlotte H. Eastman, and Sidney C. Eastman, by warranty deed, conveyed the said lands to the Wyatt Lumber Company; denies that thereafter on January 1st, 1919, said Wyatt Lumber Company conveyed the same to Edward Hines, C. F. Wiehe, and L. L. Barth, trustees of the Edward Hines Yellow Pine Trustees, by quit claim deed or otherwise.

Defendant admits that he is asserting title in and to the said land by virtue of a patent which was issued by the State of Mississippi to Mose Mitchell on December 7th, 1883, and that the title vested in the said Mose Mitchell become-, by successive conveyances, which will be more fully and particularly hereinafter set out, vested in this defendant.

Defendant denies that the lands involved in this suit are a part of the body of wild timbered lands granted by the State of Mississippi, under the Act of April 8th, 1871, to the Pearl River Improvement & Navigation Co., and denies that said lands came to complainants' predecessor in title from the same source and through the same dereignment and concerning which there has been in years past, litigation between complainants' predecessor in title and the predecessor in title of the defendant. Defendant admits, however, that his predecessors in title to said lands have asserted title to said land under the patent from the State of Mississippi issued to Mose Mitchell, in the year 1883, which patent this defendant avers is a valid patent, and the only valid patent ever issued by the State of Mississippi to said land.

Defendant admits that one of his predecessors in title was the Southern Pine Company, a corporation under the laws of Mississippi, domiciled in Vicksburg, Mississippi, and that Eugene Martin, deceased, was at one time president of the said corporation. As to the allegations in said bill of complaint contained that said Eugene Martin was the dominant power and absolutely controlled the policies and actions of the said corporation and directed the action of the various predecessors in title of the defendant in conveying said property, this defendant has no information or knowledge concerning such allegations and is unable to admit or deny the same, but for the purpose of this suit, and in order to require strict proof of said allegations, defendant denies each and every of said allegations and requires strict proof thereof by the complainant.

Defendant admits that it is true that there was a suit between the Southern Pine Company, and Mrs. Olivia B. Hall, with reference to certain lands at that time being claimed by both said parties, but denies that said litigation was in the year 1905, and denies that the title of the land involved in said litigation was exactly similar to [fol. 92] the title under which the defendant claims the land here in controversy. And defendant avers that the decision of the Circuit Court of Appeals and the Supreme Court of the United States in that case is not in any way controlling upon the Court in this case, for the reason that that case was tried and decided on an agreed statement of facts, in which agreed statement of facts it was expressly agreed that that bond required by the Act of March 27, 1871, was executed and filed by the Pearl River Improvement & Navigation Company, and approved by the Governor of the State of Mississippi, while the defendant herein denies that said bonds, which was a condition precedent to the issuance of the patent to the Pearl River Improvement & Navigation Company, was ever executed, filed and approved by the Governor. Defendant further

avers that the decision of the Circuit Court of Appeals in that cause is not controlling in this case, for the reason that the lands here involved are neither on nor near Pearl River, and under the Constitution of the State of Mississippi of 1869, Section 6, Article 8 thereof, construed in the case of *Tynes vs. Southern Pine Co.*, 54 Southern, 885, the Legislature and officers of the State of Mississippi were prohibited from donating to any body, for any purpose, swamp and overflowed land granted to the State of Mississippi by an Act of Congress of 1850 not situated on Pearl River. And defendant denies that the lands involved in this suit was left out of the suit of the Southern Pine Company against Mrs. Olivia B. Hall by inadvertance or mistake.

Defendant admits that the Southern Pine Company, on the 29th day of September, 1910, filed suit in the Chancery Court of Pearl River County, Mississippi, against Wyatt Lumber Company, one of the alleged predecessors in title of complainants, in which [fol. 93] suit Southern Pine Company dereigned its title to said lands and prayed for a cancellation of the claim of title not then but now being asserted by complainants; and defendant admits that said suit was removed to this Court and by this Court dismissed without prejudice. Defendant denies, however, that on October 23, 1911, he filed a suit against the Wyatt Lumber Company. There was a suit, however, filed by D. W. Blake, predecessor in title to this defendant, on October 23rd, 1911, in the Chancery Court of Pearl River County, against the Wyatt Lumber Company, in which suit the said D. W. Blake sought to remove the claim or title of the said Wyatt Lumber Company, as a cloud upon his title, and said suit, upon petition of the Wyatt Lumber Company, was removed to this Honorable Court. And in the petition for removal, various and sundry imaginary charges were made by the Wyatt Lumber Company to the effect that conveyances had been executed by the Southern Pine Company to prevent this Court from assuming jurisdiction of said cause of action, said charges in said petition of Wyatt Lumber Company being practically the same as the complainants have alleged them to be, but as the said D. W. Blake denied these charges, and took issue thereon, and said suit was dismissed on February 26th, 1918, by this Court under Equity Rule No. 57, without ever being tried on any of the issues there involved, and without the Court determining whether or not the imaginary allegations made by the Wyatt Lumber Company in its said petition were true, defendant now avers that what was alleged in that cause can have no bearing in this case, and is wholly superfluous and redundant matter; but if by setting out the allegations contained in the said suit by D. W. Blake against the said Wyatt [fol. 94] Lumber Company in 1911, which cause now stands dismissed under Equity Rule No. 57 of this Court, it is the intention and purpose of the complainant to re-aver the truth of the allegations in said petition contained, then this defendant denies each and every of said allegations in said petition contained, and defendant denies that the land described in the bill of complaint was conveyed by the Southern Pine Company to D. W. Blake, for the purpose

of preventing this Court assuming jurisdiction in said cause; defendant further denies that the sole object of said conveyance from the Southern Pine Company to D. W. Blake was for the purpose of dividing the said land so that the value of the land held by each particular vendee would be less than the sum of \$3,000.00, and thereby defeat the removal of said controversies to this Court.

Defendant denies that said conveyances were simulated and pretended conveyances and that they were not in fact conveyances and were never intended to pass the title [title] claimed by the said Southern Pine Company. Predecessors in title, to this defendant, and denies that the equitable title to said land was left in the Southern Pine Company, and that said corporation has since said conveyances, with the knowledge and consent of said vendees, continued to claim and assert title thereto, but on the contrary defendant avers that the Southern Pine Company has not owned or claimed to own the said — since the execution of its deed conveying said land to D. W. Blake. Defendant denies that there was no consideration for the conveyance of said land by the Southern — Company to the said D. W. Blake, and denies that said conveyance was wholly voluntarily and simulated and that said vendees and each of them, held only the legal title to said land. Defendant further denies each and every allegation of complainants that the defendant D. W. [fol. 95] Blake, held the legal title to said land in trust for the benefit of the Southern Pine Company, and that said conveyance was made for the sole purpose of defeating the removal of said cause to the United States District Court. Defendant denies that his predecessors in title after the discontinuances of said suits — all claim to said land, but avers that they have been claiming and conveying the title to said land since the dismissal of said suits and the dismissal of the suit filed by the Southern Pine Company against Wyatt Lumber Company, as will appear from the records of Pearl River County, Mississippi, and the dereliction of the title of defendant hereinafter set forth.

Defendant admits that it has been more than ten years since the filing of said suits, but denies that he and his predecessors in title have permitted complainants and their predecessors in title to pay taxes on said land; denies that complainants and their predecessors in title have paid the taxes on said lands; denies that he or his predecessors in title have permitted complainants to be and remain in the active possession and control thereof, but on the contrary defendant avers that he and his predecessors in title have paid the taxes on said land, except when complainant — rushed in ahead of him and his predecessors in title and paid the taxes thereon. And defendant further avers that there has never been any actual possession and control of said land of any kind, by either the complainants and their predecessors in title or defendant and his predecessors in title. Defendant denies that the failure of D. W. Blake to prosecute his said cause of action against the Wyatt Lumber Company, and permitting the same to be dismissed under Equity Rule No. 57 of this Court, constitutes such negligence and laches as

to bar this defendant and his predecessors in title from asserting their [fol. 96] title by way of defense or otherwise against the pretended and simulated claim of title of complainants and denies that he or his predecessors in title should be restrained from making defense to the bill of complaint filed herein by complainants; and defendant denies that it has been more than ten years since the right to bring action as to these lands or any part thereof; has first accrued to the defendant and his predecessors in title or some persons through whom he claims and denies that the right of the defendant herein to claim said lands through the Southern Pine Company, or said Martins, is now barred by the statutes of limitations of the State of Mississippi. On the contrary, defendant avers that the complainants have never owned or had a valid title on which to base a claim of title to said land, and whatever title that they or their predecessors in title have claimed to have amounts to no more than color of title and since the complainants have never gone into the actual possession and control of said land, the statutes of limitations of the State of Mississippi have never put into operation in favor of complainants and against defendant, and his predecessors in title. The defendant and his predecessors in title are, therefore, not barred by the statutes of limitations of the State of Mississippi from showing by way of defense to the suit instituted by the complainants against him, that complainants are not the owners of said land and that he is the real owner thereof.

Defendant again denies that he or his predecessors in title are precluded from asserting title to said land by way of defense in this suit or otherwise, because said cause of action of D. W. Blake against Southern Pine Company was dismissed by this Court under Equity Rule No. 57, for want of prosecution; and this defendant especially denies that the said land has for a period of more than [fol. 97] ten years next preceding the filing of this bill, been in the open, visible, notorious, exclusive, hostile and continuous adverse possession of complainants and their predecessors in title; denies that the said complainants and their predecessors in title have been claiming said lands against the world and denies that during all of said period of time, complainants and their predecessors in title paid the taxes thereon and made such use and occupation of the said lands as *the said lands as the same were capable of*.

Defendant denies that complainants and their immediate and remote grantors bought said land for a valuable consideration and in good faith; denies that they have a clear record title from the State of Mississippi predicated upon a patent antedating the patent upon which the defendant is asserting title to said land. Defendant denies that the alleged patent from the State of Mississippi to the Pearl River Improvement & Navigation Company, upon which the title to complainants is founded, constitutes a contract between the Pearl River Improvement & Navigation Company, and the State of Mississippi, and that said complainants are protected in their title to said land by Article —, Section —, of the Constitution of the United States. On the contrary, defendant avers that said pretended patent was without consideration, and an attempted donation

in violation of Section 6, Article 8 of the Constitution of the State of Mississippi of 1869. Defendant admits that he is asserting title to and claiming to own said land, but denies that it is a pretended claim of title, and denies that it casts a doubt, cloud or suspicion on complainants' claim of title, on the contrary defendant avers that his title is true, legal and equitable title to said lands, and that the claim of title of complainants to said land casts a cloud, doubt and [fol. 98] suspicion on his title. Defendant denies that this is a suit of civil nature of which this Court has original jurisdiction, and denies that the land in controversy exceeds, *exceeds*, exclusive of interest and cost the sum of value of \$3,000.00.

Defendant avers that the true, legal and equitable title to said land is vested in him and defendant dereigns the title under which he claims to be true owner of said la-s as follows:

(1) By an Act of Congress approved September 28th, 1850, said land was granted by the United States to the State of Mississippi, and thereafter said land was patented to the State of Mississippi, by the *United River County, Mississippi Book 5, page 166.*

(2) The State of Mississippi, in consideration of the sum of \$— sold said land to Moses Mitchell, and on December 7th, 1883, issued its patent therefor to the said Moses Mitchell, which patent is of record in the Land Deed Records of Pearl River County, Mississippi, Book 5, page 166.

(3) The said Moses Mitchell, for a valuable consideration, on December 27th, 1883, conveyed said land to S. L. Woolridge by a deed bearing that date and of record in Book 5, page 204, of the Land Deed Records of Pearl River County, Mississippi.

(4) That said S. L. Woolridge, for a valuable consideration on January 23rd, 1885, sold and conveyed said land to Eugene Martin, by a deed bearing that date and of record in Land Deed Book 5, page 219, of the Land Deed Records of Pearl River County, Mississippi.

[fol. 99] (5) That the said Eugene Martin, for a valuable consideration, on January 23rd, 1885, sold and conveyed said land to J. C. Barrett by a deed bearing that date, and of record in Land Deed Book 5, page 223, of the Land Deed Records of Pearl River County, Mississippi.

(6) That the said J. G. Barrett, for a valuable consideration, on July 21st, 1888, sold and conveyed said lands to Henry Clifton Rodes by a deed bearing that date and of record in Book 6, page 5 of the Land Deed Records of Pearl River County, Mississippi.

(7) That the said Hernry Clifton Rodes, for a valuable consideration, on August 6th, 1889, sold and conveyed said land to the Southern Pine Company by a deed bearing that date and of record in Book 6, page 42, of the Land Deed Records of Pearl River County, Mississippi.

(8) That the Southern Pine Company, for a valuable consideration, on the 26th day of January, 1909, sold and conveyed said land to D. W. Blake, by a deed bearing that date and of record in the Land Deed Records of Pearl River County, Mississippi, Book 15, page 286.

(9) That the said D. W. Blake, for a valuable consideration, on the 14th day of June, 1920, sold and conveyed said lands to H. P. Lewis, the defendant, by a deed bearing that date and of record in Book 27, page 307, of the Land Deed Records of Pearl River County, Mississippi.

Defendant further avers that by Section 6, Article 8, of the Constitution of the State of Mississippi of 1869, a common school [fol. 100] fund was established to consist of the proceeds of the sale of all swamp and overflowed lands granted to the state under Act of Congress approved September 28th, 1850, "except the swamp lands lying and situated on Pearl River, in the counties of Hancock, Marion, Lawrence, Simpson and Copiah"; and that at the time of the enactment of said Act of March 27th, 1871, attempting to grant and authorize the issuance of a patent to the land described in the bill of complaint to the Pearl River improvement & Navigation Company, the predecessors in title of complainants, and at the time of the issuance of the said pretended patent to the said Pearl River Improvement & Navigation Company, under said Act of March 27, 1871, the said Section 6, Article 8 of the Constitution of the State of Mississippi was in full force and effect and the Act of the Secretary of State and Governor in attempting to issue a patent to the said Pearl River Improvement & Navigation Company, conveying said land described in the bill of complaint, was in plain violation of said Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, and were void and vested no title whatever in the said Pearl River Improvement & Navigation Company, the predecessors in title of complainants, for the reason as defendant avers that said land is neither on nor near Pearl River, but is remotely situated from Pearl River and is more than eighteen miles East of Pearl River and lies East of the range of hills that divides the watershed of Pearl River from that of Wolf River, and actually lies East of Wolf River, and upon a tributary of Wolf River running into Wolf River from the East. Defendant further avers that said land drains into Wolf River and many miles of space of territory intervenes between the Western Edge of the above described lands [fol. 101] and the most Eastern edge of any part of the swamp and overflowed lands donated to the State, under Act of Congress of September 28th, 1850, that lie either on Pearl River or within the watershed of Pearl River; so that said lands neither lie in the valley of Pearl River nor are they contiguous to any swamp and overflowed lands granted to the State by said Act of Congress, which do lie in the valley or watershed of Pearl River. And so it is, defendant avers, that the lands described in the bill of complaint was never conveyed to the Pearl River Improvement & Navigation

Company, by said patent alleged by complainants to have been issued to the said Pearl River Improvement & Navigation Company, under the Act of March 27th, 1871, and that said pretended patent to the Pearl River Improvement Company is illegal and void for the reason that said attempted conveyances to the Pearl River Improvement & Navigation Company, by the officers of the State of Mississippi, under Act of March 27, 1871, was in violation of Section 6, Article 8 of the Constitution of the State of Mississippi of 1869.

Defendant further avers that the Supreme Court of the State of Mississippi, in the cause of *Tynes vs. Southern Pine Company*, reported in 54 Southern —, page 885, in construing a patent to swamp and overflowed lands not located on Pearl River, and issued to the Pearl River Navigation & Improvement Company, under said Act of March 27, 1871, creating the Pearl River Improvement & Navigation Company, held that said patent was void and conveyed no title to the said Pearl River Improvement & Navigation Company for the reason that said land attempted to be conveyed by said patent was not on Pearl River and the Legislature of the State of Mississippi was prohibited by Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, (or 1868) from donating to [fol. 102] anybody for any purpose swamp and overflowed lands not situated on Pearl River; that the Supreme Court of the State of Mississippi, in the case of *Hardy vs. Hartman*, reported in Volume 4, Southern Reporter, page 545, and also in (73 Southern Reporter, page 798), the case of *Becker vs. Bank of Columbia*) held that all patents issued to the Pearl River Improvement & Navigation Company under said Act of March 27, 1871, are void for the reason that said company did not comply with the condition precedent in said act that it should execute and file bond therein provided. The Supreme Court of the State of Mississippi, in the case of *Becker vs. Bank of Columbia*, supra, further held that the decision in the case of *Hardy vs. Hartman*, supra, had become a rule of property in the State of Mississippi, and that all parties acquiring property in the State of Mississippi had a right to rely on the law as declared by the decision of the Court of last resort of the State of Mississippi.

Defendant further avers that said Act of 1871, by which said company was created, did not divest the State of title to said land; but, on the contrary, it expressly provided that before patents to said land could be issued by the State to said company that a bond in the sum of \$50,000.00 should be executed by said company, filed in the office of the Secretary of State and approved by the Governor, and the execution, filing and approval of said bond was made by the act a condition precedent to the patents being issued to said company. And since the complainants neither allege nor claim that said bond was executed, filed and approved as required by said act, the patent under which they claim to own said land is absolutely and utterly void.

Defendant further avers that if this Court should hold that the land here involved is on Pearl River within the meaning of the Act [fol. 103] of March 27, 1871, creating the Pearl River Improve-

ment & Navigation Company, then said lands were granted to the Board of Commissioners of the Southern District of Pearl River, by an Act of the Legislature of the State of Mississippi of March 12, 1852, which act expressly granted to the Board of Commissioners of the Southern District of Pearl River, all of the Swamp and overflowed lands, lying and situated on Pearl River, in the counties of Marion, Lawrence, Hancock, Copiah and Simpson, and included in the grant of such lands made by Act of Congress of September 28, 1850, to the State of Mississippi. Defendant further avers that said counties named in said act appointed the Commissioners therein provided for and said Commissioners appointed a Treasurer as by said act provided. Defendant further avers that said land was at the time of the enactment of March 12, 1852, located in Marion County, but said land is now located in Pearl River County.

So defendant avers that if said land could be held to be land lying and situated on Pearl River, then the title to said land by virtue of the Act of March 12, 1852, passed to the Board of Commissioners of the Southern District of Pearl River for the benefit of the counties therein named, and said counties had a vested right in said land at the time the Legislature by said act of March 27, 1871, attempted to grant the same to the Pearl River Improvement & Navigation Company and there was no authority in the Legislature of the State of Mississippi to grant said land by Act of March 27, 1871, to the Pearl River Improvement & Navigation Company and no right in the Legislature of the State of Mississippi to impair the right of the said counties to said land which became vested in said counties by Act of March 12, 1852. And so it is defendant avers that if said lands are [fol. 104] held to be lands on Pearl River, then the patent to the Pearl River Improvement & Navigation Company, under which complainants claim to own said land, is void for the reason that said title to said land was not in the State of Mississippi on March 27, 1871, and there was no authority in the Legislature to grant said lands to the Pearl River Improvement & Navigation Company or any one else.

Defendant further avers that the complainants and their predecessors in title have known for more than forty years that the title under which they claim is utterly and absolutely void and that they have no title to said land, and during all of said years they have made no assertion of their claim of title in any way. And they well know that they could not secure a decree in any Court in the State of Mississippi upholding the validity of their claim of title, and cancelling the title of defendant. Yet in defiance of the repeated decisions of the Supreme Court of the State of Mississippi that all titles of the kind under which they claim to own said land are utterly and totally void they are now attempting to assert said invalid title in this Court. And defendant avers that they filed said suit in this Court in an effort to avoid the effect of the decisions of the Supreme Court of the State of Mississippi and in the hope that this Court would refuse to follow the decisions of the Supreme Court of the State of Mississippi, which Court, above all others, has the right to construe the statutes of its own state.

Defendant further avers that the matter, or land, in controversy, exclusive of interest and costs, does not exceed the sum of \$3,000.00 but the value of said land is much less than \$3,000.00, and this Court should refuse to take jurisdiction of this cause.

[fol. 105] And now having fully answered all of the allegations of the bill of complaint filed herein against him, or so much and such parts thereof as he is advised that it is material or necessary for him to make answer to, defendant prays that he may be dismissed with his reasonable costs, etc.

H. P. Lewis, Defendant. Hathorn & Williams, Solicitors for Defendant.

Jurat showing the foregoing was duly sworn to by E. B. Williams omitted in printing.

[fol. 106] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF GEORGE LAWRENCE

Comes the defendant, George Lawrence, by his attorneys, and answering so much and such parts of the bill of complaint filed against him herein as he is advised it is material and necessary for him to make answer to, says:

He denies that the complainant, Edward Hines Yellow Pine Trustees, are the real, true and legal and equitable owners of the land described in the bill of complaint as the S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{2}$ of Section 36, Tp. 2 S. R., 15 West, situated in the County of Pearl River, State of Mississippi, but admits that said land is now situated in that part of Pearl River County which was formerly a part of Marion County, State of Mississippi.

Defendant admits that said lands were donated to the State of Mississippi under and by virtue of an Act of Congress, approved September 28th, 1850, but denies that said lands were patented to the Pearl River Improvement & Navigation Co., in accordance with either an Act of the Legislature of the State of Mississippi, approved on the 8th day of April, 1871, or any other Act of the Legislature; denies that a patent was ever issued by the State of Mississippi to the Pearl River Improvement & Navigation Co., denies that Pearl River Improvement & Navigation Co., for a valuable consideration, on November 20th, 1872, conveyed said lands to M. S. Baldwin; denies [fol. 107] that thereafter, on the 17th day of April, 1873, the said M. S. Baldwin by his attorney in fact, Samuel Vose, for a valuable consideration, conveyed said land to Israel Hall, by deed of Record in Book 15, page 256; denies that Olivia B. Hall acquired title to said land by a last will and testament of her husband, Israel Hall, and denies that the said Israel Hall left a last will and testament and that said alleged will and testament was duly probated in all respects as required by law and named the said Olivia B. Hall as his sole legatee;

denies that on July 23, 1900, the said Olivia B. Hall, by quit claim deed, conveyed the said land to Charlotte H. Eastman, and denies that said deed was in confirmation of deed theretofore executed by the said Israel Hall to Charlotte H. Eastman, wife of Sidney C. Eastman; denies that on May 13th, 1904, M. S. Baldwin executed and delivered unto the said Charlotte H. Eastman a further deed to the said land ratifying and confirming a previous deed executed by Samuel Vose as attorney for the said Baldwin in April, 1873; denies that thereafter on the 5th day of July, 1915, for a valuable consideration, the said Charlotte H. Eastman, by warranty deed, conveyed the said lands to the Wyatt Lumber Company; denies that thereafter on January 1st, 1919, said Wyatt Lumber Company conveyed the same to Edward Hines, C. F. Wiehe, and L. L. Barth, trustees of the Edward Hines Yellow Pine Trustees, by quit claim deed or otherwise.

Defendant admits that he is asserting title in and to the said land by virtue of a patent which was issued by the State of Mississippi to Mose Mitchell on December 7th, 1883, and that the title vested in the said Mose Mitchell became, by successive conveyances, which will be more fully and particularly hereinafter set out, vested in this defendant.

[fol. 108] Defendant denies that the lands involved in this suit are a part of the body of wild timbered lands granted by the State of Mississippi, under the Act of April 8th, 1871, to the Pearl River Improvement & Navigation Co., and denies that said lands came to complainants' predecessor in title from the same source and through the same dereliction and concerning which there has been in years past, litigation between complainants' predecessor in title and the predecessor in title of the defendant. Defendant admits, however, that his predecessors in title to said lands have asserted title to said land under the patent from the State of Mississippi issued to Mose Mitchell, in the year 1883, which patent this defendant avers is a valid patent, and, the only valid patent ever issued by the State of Mississippi to said land.

Defendant admits that one of his predecessors in title was the Southern Pine Company, a corporation under the laws of Mississippi, domiciled in Vicksburg, Mississippi, and that Eugene Martin, deceased, was at one time president of the said corporation. As to the allegations in said bill of complaint contained that said Eugene Martin was the dominant power and absolutely controlled the policies and actions of the said corporation and directed the action of the various predecessors in title of the defendant in conveying said property, this defendant had no information or knowledge concerning such allegations and is unable to admit or deny the same, but for the purpose of this suit, and in order to require strict proof of said allegations, defendant denies each and every of said allegations and requires strict proof thereof by the complainant.

Defendant admits that it is true that there was a suit between the Southern Pine Company, and Mrs. Olivia B. Hall, with reference to [fol. 109] certain lands at that time being claimed by both said parties, but denies that said litigation was in the year 1905, and denies that the title of the land in said litigation was exactly similar to the title under which the defendant claims the land here in con-

trovery. And defendant avers that the decision of the Circuit Court of Appeals and the Supreme Court of the United States in that case is not in any way controlling upon the Court in this case, for the reason that that case was tried and decided on an agreed statement of facts it was expressly agreed that the bond required by the Act of March 27, 1871, was executed and filed by the Pearl River Improvement & Navigation Company, and approved by the Governor of the State of Mississippi while the defendant herein denies that said bonds, which was a condition precedent to the issuance of the patent to the Pearl River Improvement & Navigation Company, was never executed, filed and approved by the Governor. Defendant further avers that the decision of the Circuit Court of Appeals in that cause is not controlling in this case, for the reason that the lands here involved are neither on or near Pearl River, and under the Constitution of the State of Mississippi of 1869, Section 6, Article 8 thereof, construed in the case of *Tynes vs. Southern Pine Co.*, 54 Southern 885, the Legislature and officers of the State of Mississippi were prohibited from donating to any body, for any purpose, swamp and overflowed land granted to the State of Mississippi by an Act of Congress of 1850 not situated on Pearl River. And defendant denies that the lands involved in this suit *was* left out of the suit of the Southern Pine Company against Mrs. Olivia B. Hall by inadvertence or mistake.

[fol. 110] Defendant admits that the Southern Pine Company, on the 29th day of September, 1910, filed suit in the Chancery Court of Pearl River County, Mississippi, against Wyatt Lumber Company, one of the alleged predecessors in title of complainants, in which suit Southern Pine Company dereigned its title to said lands and prayed for a cancellation of the claim of title not then but now being asserted by complainants; and defendant admits that said suit was removed to this Court and by this Court dismissed without prejudice. Defendant denies, however, that on October 23, 1911, he filed a suit against the Wyatt Lumber Company. There was a suit however, filed by Cecile Dowling, predecessor in title to this defendant, on October 23rd, 1911, in the Chancery Court of Pearl River County, against the Wyatt Lumber Company, in which suit the said Cecile Dowling sought to remove the claim of title of the said Wyatt Lumber Company, as a cloud upon his title, and said suit, upon petition of the Wyatt Lumber Company, was removed to this Honorable Court. And in the petition for removal, various — sundry imaginary charges were made by the Wyatt Lumber Company to the effect that conveyances had been executed by the Southern Pine Company to prevent this Court from assuming jurisdiction of said cause of action, said charges in said petition of Wyatt Lumber Company being practically the same as the complainants have alleged them to be, but as the said Cecile Dowling denied these charges, and took issue thereon, and said suit was dismissed on February 26th, 1918, by this Court under Equity Rule No. 57, without said cause ever being tried on any of the issues there involved, and without the Court determining whether or not the imaginary allegations made by the Wyatt Lumber Company in its said petition were true,

[fol. 111] defendant now avers that what was alleged in that cause can have no bearing in this case, and is wholly superfluous and redundant matter; but if by setting out the allegations contained in the said suit by Cecile Dowling against the said Wyatt Lumber Company in 1911, which cause now stands dismissed under Equity Rule No 57 of this Court, it is the intention and purpose of the complainant to recover the truth of the allegations in said petition contained, then this defendant denies each and every of said allegations in said petition contained, and defendant, denies that the land described in the bill of complaint was conveyed by the Southern Pine Company to Cecile Dowling for the purpose of preventing the Court from assuming jurisdiction in said cause; defendant further denies that the sole object of said conveyance from the Southern Pine Company to Cecile Dowling was for the purpose of dividing the said land so that the value of the land held by each particular vendee would be less than the sum of \$3,000.00 and thereby defeat the removal of said controversies to this Court.

Defendant denies that said conveyances were simulated and pretended conveyances and that they were not in fact conveyances and were never intended to pass the title claimed by the said Southern Pine Company, predecessor in title, to this defendant, and denies that the equitable title to said land was left in the Southern Pine Company, and that said corporation has since said conveyance, with the knowledge and consent of said vendees, continued to claim and assert title thereto, but on the contrary, defendant avers that the Southern Pine Company has not owned or claimed to own the said land since the execution of its deed conveying said land to Cecile Dowling, denies that there was no consideration for the conveyance [fol. 112] of said land by the Southern Pine Company to the said Cecile Dowling and denies that said conveyance was wholly voluntarily and simulated and that said vendees and each of them, held only the legal title to said land. Defendant further denies each and every allegation of complainants that the defendant, Cecile Dowling held the legal title to said land in trust for the benefit of the Southern Pine Company, and that said conveyance was made for the sole purpose of defeating the removal of said cause to the United States District Court.

Defendant denies that his predecessors in title after the discontinuance of said suits abandoned all claim to said land, but avers that they have been claiming and conveying the title to said land since the dismissal of said suits and the suit filed by the Southern Pine Company against Wyatt Lumber Company, as will appear from the records of Pearl River County, Mississippi, and the dereignment of the title of defendant hereinafter set forth. Defendant admits that it has been more than ten years since the filing of said suits, but denies that he and his predecessors in title have permitted complainants and their predecessors in title to pay taxes on said land; denies that complainants and their predecessors in title have paid the taxes on said land; denies that he or his predecessors in title have permitted complainants to be and remain in the active possession and control thereof, but on the contrary defendant avers

that he and his predecessors in title have paid the taxes on said land, except when complainants rushed in ahead of him and his predecessors in title and paid the taxes thereon. And defendants further avers that there has never been any actual possession and control of said land of any kind, by either the complainants and their predecessors in title or defendant and his predecessors in title. [fol. 113] Defendant denies that the failure of Cecile Dowling to prosecute his said cause of action against the Wyatt Lumber Company, and permitting the same to be dismissed under Equity Rule No. 57 of this Court, constitutes such negligence and laches as to bar this defendant and his predecessors in title from asserting their title by way of defense or otherwise against the pretended and simulated claim of title of complainants, and denies that he or his predecessors in title should be restrained from making defense to the bill of complaint filed herein by complainants; and defendant denies that it has been more than ten years since the right to bring an action as to these lands or any part thereof, has first accrued to the defendant and his predecessors in title or some persons through whom he claims and denies that the right of the defendant herein to claim said lands through the Southern Pine Company, or the said Martins, is now barred by the statutes of limitations of the State of Mississippi. On the contrary defendants avers that the complainants have never owned or had a valid title on which to base a claim of title to said land, and whatever title that they or their predecessors in title have claimed to have amounts to no more than color of title and since the complainants have never gone into the actual possession and control of said land, the statutes of limitations of the State of Mississippi have never been put into operation in favor of complainants and against defendant, and his predecessors in title. The defendant and his predecessors in title are, therefore, not barred by the Statutes of limitations of the State of Mississippi from showing by way of defense to the suit instituted by the complainants against him, that complainants are not the owners of said land and that he is the real owner thereof.

[fol. 114] Defendant again denies that he or his predecessors in title are precluded from asserting title to said land by way of defense in this suit or otherwise, because said cause of action of Cecile Dowling against Southern Pine Company was dismissed by this Court under Equity Rule No. 57, for want of prosecution; and this defendant especially denies that the said land has for a period of more than ten years next preceeding the filing of this bill, been in the open, visible, notorious, exclusive, hostile and continuous adverse possession of complainants and their predecessors in title, denies that the said complainants and their predecessors in title have been claiming said lands against the world and denies that during all of the said period of time, complainants and their predecessors in title paid the taxes thereon and made such use and occupation of the said lands as the same were capable of.

Defendant denies that complainants and their immediate and remote grantors bought said land for a valuable consideration and in good faith; denies that they have a clear record title from the State

of Mississippi predicated upon a patent antedating the patent upon which the defendant is asserting title to said land. Defendant denies that the alleged patent from the State of Mississippi to the Pearl River Improvement & Navigation Company upon which the title to complainants is founded, constitutes a contract between the Pearl River Improvement & Navigation Company, and the State of Mississippi, and that said complainants are protected in their title to said land by Article — Section — of the Constitution of the United States, on the contrary, defendant avers that said pretended patent was without consideration and an attempted donation in violation of Section 6, Article 8, of the Constitution of the State of Mississippi of 1869. Defendant admits that he is asserting title to and claiming to own said land, but denies that it is a pretended claim of title, and denies that it casts a doubt, cloud or suspicion on complainants' claim of title, on the contrary defendant avers that his title is the true, legal and equitable title to said lands, and that the claim of title of complainants to said land casts a cloud, doubt and suspicion on his title. Defendant denies that this is a suit of a civil nature of which this Court has original jurisdiction, and denies that the land in controversy exceeds, exclusive of interest and cost the sum or value of \$3,000.00.

Defendant avers that the true, legal and equitable title to said land is vested in him and defendant dereigns the title under which he claims to be the true owner of said land, as follows:

(1) By an act of Congress approved September 28th, 1850, said land was granted by the United States to the State of Mississippi, and thereafter said land was patented to the State of Mississippi by the United States, pursuant to the provisions of said Act of Congress.

(2) The State of Mississippi in consideration of the sum of \$—, sold said land to Mose Mitchell, and on December 7th, 1883, issued its patent therefore to the said Moses Mitchell, which patent is of record in the Land Deeds of Pearl River County, Mississippi, Book 5, page 166.

(3) The said Moses Mitchell, for a valuable consideration, on December 7th, 1883, conveyed said land to S. L. Woolridge by a deed bearing that date and of record in Book 5, page 204 of the Land Deed Records of Pearl River County, Mississippi.

[fol. 116] (4) That said S. L. Woolridge, for a valuable consideration on January 23rd, 1885, sold and conveyed said land to Eugene Martin, by deed bearing that date and of record in Land Deed Book 5, page 219 of the Land Deed Records of Pearl River County, Mississippi.

(5) That the said Eugene Martin, for a valuable consideration on January 23rd, 1885, sold and conveyed said land to J. G. Barrett by a deed bearing that date, and of record in Land Deed Book 5, page 223 of the Land Deed Records of Pearl River County, Mississippi.

(6) That the said J. G. Barrett, for a valuable consideration, on July first, 1888, sold and conveyed said land to Henery Clifton Rodes

by a deed bearing that date and of record in Book 6, page 5 of the Land Deed Records of Pearl River County, Mississippi.

(7) That the said Henry Clifton Rodes, for a valuable consideration, on August 6th, 1889, sold and conveyed said land to the Southern Pine Company by a deed bearing that date and of record in Book 6, page 42, of the Land Deed Records of Pearl River County, Mississippi.

(8) That the Southern Pine Company, for a valuable consideration on the 26th day of January, 1909, sold and conveyed said land to Cecile Dowling by a deed bearing that date and of record in the Land Deed Records of Pearl River County, Mississippi, Book 15, page 285.

(9) That the said Cecile Dowling, for a valuable consideration, on the 12th day of June 1920, sold and conveyed said lands to George [fol. 117] Lawrence, the defendant, by a deed bearing that date and of record in Book 27, page 335 of the Land Deed Records of Pearl River County, Mississippi.

Defendant further avers that by Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, a common school fund was established to consist of the proceeds of the sale of all swamp and overflowed lands granted to the State under Act of Congress approved September 28, 1850, Except the swamp lands lying and situated on Pearl River, in the counties of Hancock, Marion, Lawrence, Simpson and Copiah;" and that at the time of the enactment of said Act of March 27th, 1871, attempting to grant, and authorize the issuance of a patent to, the land described in the bill of complaint of the Pearl River Improvement & Navigation Company, the predecessor in title of complainants, and at the time of the issuance of the said pretended patent to the said Pearl River Improvement & Navigation Company, under said Act of March 27, 1871, the said Section 6, Article 8 of the constitution of the State of Mississippi was in full force and effect and the Act of the Secretary of State and Governor in attempting to issue a patent to the said Pearl River Improvement Company, conveying said land described in the bill of complaint, was in plain violation of said Section 6, Article 8 of the constitution of the State of Mississippi of 1869, and were utterly void and vested no title in the said Pearl River Improvement & Navigation Company the predecessors in title of complainants, for the reason that defendant avers, that said land is neither on nor near Pearl River, but is remotely situated from Pearl River and is more than eighteen miles East of Pearl [fol. 118] River and lies East of the range of hills that divides the watershed of Pearl River from that of Wolf River, and actually lies East of Wolf River and upon a tributary of Wolf River running into Wolf River from the East. Defendant further avers that said land drains into Wolf River and many miles of space of territory intervenes between the Western edge of the above described lands and the most Eastern edge of any part of any of the swamp and overflowed lands donated to the state, under Act of Congress of September 28th, 1850, that lie either on Pearl River or within the watershed of Pearl

River; so that said lands neither lie in the valley of Pearl River nor are they contiguous to any swamp and overflowed lands granted to the state by said Act of Congress, which do lie in the valley or watershed of Pearl River. And so it is, defendant avers, that the lands described in the bill of complaint *was* never conveyed to the Pearl River Improvement & Navigation Company, by said patent alleged by complainants to have been issued to the said Pearl River Improvement & Navigation Company, under the Act of March 27th, 1871, and that said pretended patent to the Pearl River Improvement Company is illegal and void for the reason that said attempted conveyances to the Pearl River Improvement & Navigation Company, by the officers of the State of Mississippi, under Act of March 27, 1871, was in violation of Section 6, Article 8 of the Constitution of the State of Mississippi of 1869.

Defendant further avers that the Supreme Court of the State of Mississippi, in the case of *Tynes vs. Southern Pine Company*, reported in 54 Southern, page 885, in construing a patent to swamp and overflowed lands not located on Pearl River and issued to the Pearl River Navigation & Improvement Company, under said Act of [fol. 119] March 27, 1871, creating the Pearl River Improvement & Navigation Company, held that said patent was void and conveyed no title to the said Pearl River Improvement Company for the reason that said land attempted to be conveyed by said patent was not on Pearl River, and the Legislature of the State of Mississippi was prohibited by Section 6, Article 8 of the Constitution of the State of Mississippi of 1869, (or 1868) from donating to any body for any purpose swamp and overflowed lands not situated on Pearl River; that the Supreme Court of the State of Mississippi, in the case of *Hardy vs. Hartman*, reported in Volume 4, Southern Reporter, page 545, and also in (73 Southern Reporter, page 798) the case of *Becker vs. Bank of Columbia*, held that all patents issued to the Pearl River Improvement & Navigation Company under said Act of March 27, 1871, are void for the reason that said Company did not comply with the condition precedent in said act that it should execute and file the bond therein provided. The Supreme Court of the State of Mississippi, in the case of *Becker vs. Bank of Columbia*, supra, further held that the decision in the case of *Hardy vs. Hartman*, supra, had become a rule of property in the State of Mississippi and that all parties acquiring property in the State of Mississippi had a right to rely on the law as declared by the decision of the Court of last resort of the State of Mississippi.

Defendant further avers that said act of 1871, by which said company was created, did not divest the state of title to said land: on the contrary, it expressly provided that before patents to said land could be issued by the state to said company that a bond in the sum of \$50,000.00 should be executed by said company, filed in the [fol. 120] office of the Secretary of State and approved by the Governor, and the execution, filing and approval — said bond was made by the act a condition precedent to the patents being issued to said company. And since the complainants neither allege nor claim that said bond was executed, filed and approved as required by said act,

the patent under which they claim to own said land is absolutely and utterly void.

Defendant further avers that if this Court should hold that the land here involved is on Pearl River within the meaning of the Act of March 27, 1871, creating the Pearl River Improvement & Navigation Company, then said lands were granted to the Board of Commissioners of the Southern District of Pearl River, by an Act of the Legislature of the State of Mississippi of March 12, 1852, which Act expressly granted to the Board of Commissioners of the Southern District of Pearl River, all of the swamp and overflowed lands, lying and situated on Pearl River, in the counties of Marion, Lawrence, Hancock, Copiah and Simpson, and included in the grant of such lands made by Act of Congress of September 28, 1850, to the State of Mississippi. Defendant further avers that said counties named in said act appointed the Commissioners therein provided for and said Commissioners appointed a Treasurer as by said act provided, Defendant further avers that said land was at the time of the enactment of March 12, 1852 located in Marion County, but said land is now located in Pearl River County.

So defendant avers that if said land could be held to be land lying and situated on Pearl River, then the title to said land by virtue of the Act of March 12, 1852, passed to the Board of Commissioners of the Southern District of Pearl River for the benefit of the counties therein named, and said counties had a vested right in said land at [fol. 121] the time the Legislature by said act of March 27, 1871, attempted to grant the same to the Pearl River Improvement & Navigation Company, and there was no authority in the Legislature of the State of Mississippi to grant said land by the Act of March 27, 1871, to the Pearl River Improvement & Navigation Company and no right in the Legislature of the State of Mississippi to impair the right of the said counties to said land which became vested in said counties by the Act of March 12, 1852. And so it is defendant avers that if said lands are held to be lands on Pearl River, then the patent to the Pearl River Improvement & Navigation Company, under which complainants claim to own said land, is void for the reason that said title to said land was not in the State of Mississippi on March 27, 1871, and there was no authority in the Legislature to grant said lands to the Pearl River Improvement & Navigation Company or any one else.

Defendant further avers that the complainants and their predecessors in title have known for more than forty years that the title under which they claim is utterly and absolutely void and that they have no title to said land, and during all of said years they have made no assertion of their claim of title in anyway. And they well know they could not secure a decree in any Court of the State of Mississippi upholding the validity of their claim of title, and cancelling the title of defendant. Yet in defiance of the repeated decisions of the Supreme Court of the State of Mississippi that all titles of the kind under which they claim to own said land are utterly and totally void they are now attempting to assert said invalid title in this Court. And defendant avers that they filed said suit in this

Court in an effort to avoid the effect of the decisions of the Supreme [fol. 122] Court of the State of Mississippi and in hope this Court would refuse to follow the decisions of the Supreme Court of the State of Mississippi, which Court, above all others has the right to construe the statutes of its own state.

Defendant further avers that the matter, or land, in controversy, exclusive of interest and costs, does not exceed the sum of \$3,000.00 but the value of said land is much less than \$3,000.00, and this Court should refuse to take jurisdiction of this cause.

And now having fully answered all of the allegations of the bill of complaint filed herein against him, or so much and such parts thereof as he is advised that it is material or necessary for him to make answer to, defendant prays that he may be dismissed with his reasonable costs, etc.

George Lawrence, Defendant. Hathorn & Williams, Solicitors for Defendant.

Jurat showing the foregoing was duly sworn to by E. B. Williams omitted in printing.

[fol. 123] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AND ORDER CONSOLIDATING CASES

By agreement of the parties in open Court, in this case and the three companion cases with this case styled and numbered on the Equity Docket of this Court as follows: No. 222, Edward Hines Yellow Pine Trustees, vs. Francis C. Martin; No. 223, Edward Hines Yellow Pine Trustees vs. H. P. Lewis; No. 224, Edward Hines Yellow Pine Trustees vs. George Lawrence, the said three companion cases styled and numbered above are consolidated with this case, to be tried together on the bills of complaint and answers in each case, and [fol. 124] the agreed statement of facts and documentary evidence introduced and in evidence under said agreed statement of facts, which said cases shall be tried together as one case and one decree only entered which shall be the final decree of this Court in all four cases.

Ordered, adjudged and decreed in open Court by consent of the parties in the above styled and numbered cases on this 13th day of June, A. D. 1923.

E. R. Holmes, District Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

AGREED STATEMENT OF FACTS

It is agreed by and between the parties hereto;

(1) That the State of Mississippi acquired title to the lands involved in this suit under the Act of Congress approved September 28, 1850, commonly called the "Swamp Land Act" and that said lands were duly listed or patented to the state by the United States and were owned by the state at the time of the enactment of Chapter 34 laws of the Mississippi Legislature of 1852, approved March 12, 1852; and also;

(2) That whatever title, if any, to said lands was vested in the Pearl River Improvement & Navigation Company by the patent [fol. 125] offered in evidence by complainants in this cause passed to and is now claimed by the complainants in this cause by virtue of *means* conveyances from Pearl River Improvement & Navigation Company to the complainants, and that the introduction of evidence by complainants of a chain of title connecting said complainants with the title, if any, that — vested in Pearl River Improvement & Navigation Company under said patent is hereby waived, and further that the complainants in this suit acquired their deed to said lands from the remote vendees and successors in claim of title to said Pearl River improvement & Navigation Company on the 1st, day of January, A. D. 1918; and also:

(3) That whatever title, if any, to said lands was vested in Mose Mitchell by the patent offered in evidence by the defendant in this cause passed to and is now claimed by the defendant in this cause by virtue of mesne conveyances from said Mose Mitchell to the defendant, and that the introduction of evidence by defendant of a chain of title connecting said defendant with the title, if any, vested in Mose Mitchell under said patent is hereby waived, and further that the defendants in this suit and in the three companion suits hereinbelow referred to acquired these deeds to the lands, involved in each case from the remote vendees and successors in claim of title to said Mose Mitchell on the respective dates as shown by the answers of each defendant in this and said companion cases;

(4) That neither of the parties to this suit knows who paid the taxes on said lands prior to the year 1890; but that the defendant's predecessors in claim of title paid the taxes on said lands for the [fol. 126] fiscal year 1892 under receipt No. 654 and for the fiscal year 1903 under receipt No. 387 and for the fiscal year 1905 under receipt No. 160, the payment of which taxes for the fiscal year 1905 by defendant's predecessors in claim of title was made on the 23 day of Nov. 1905, and it is agreed that on Dec. 20, 1905, complainants' predecessors in claim of title also paid the taxes on said lands under receipt No. 435; and it is further agreed that as to each year from and

including the year 1890 up to and including the year 1922, with the exception of said years 1892 and 1903 and 1905, the taxes on said lands were paid by the complainants and their predecessors in claim of title; alone and also:

(5) That the complainants were at the time of the commencement of this suit and now are citizens and residents of the State of Illinois, and the defendant was at the time of the commencement of this suit and now a citizen and resident of the State of Mississippi; and further that said lands were at the time of the commencement of this suit and now are, exclusive of interest and costs, worth more than \$3,000.00 and also:

(6) That the lands involved in this suit were located in Marion County from the time the state acquired title thereto until 1890 when Pearl River County was created out of portions of Marion and Hancock counties, since which time said lands have been located in Pearl River County; that Pearl River constitutes the Western boundary line of Pearl River County, and the range line dividing ranges 13 and 14 West of St. Stephens Meridian in Mississippi constitutes the Eastern boundary line — Pearl River County, and that [fol. 127] said two respective boundary lines were, until the creation of said Pearl River County, respectively the western and the eastern boundary lines of that portion of Marion County which was incorporated into Pearl River County when that county was created; and that the lands involved in this suit are located about six miles west of the said eastern boundary line of Pearl River County and about twenty miles east of the said Pearl River; and also:

(7) That the lands involved in this suit are located on Wolf River on the eastern side of said river, and lies east of the range of hills that divides the watershed of Wolf River from the watershed of Pearl River; that said lands are located about 20 miles east of Pearl River, and are located about 35 miles southwest of Leaf River, and lie southwest of the range of hills dividing the watershed of Leaf River from that of Pearl River; that Wolf river is a small stream as compared with Pearl River and Leaf River, and rises in the northern part of Pearl River County, near the line, about 12 miles east of Pearl River, and empties into the Bay of St. Louis, in Harrison County about 20 miles east of the mouth of Pearl River, and runs almost parallel with said Pearl River, that there is a dividing ridge or range of hills dividing the water-shed of Wolf River from that of Pearl River from the source of said Wolf River to its mouth; that said Wolf River intervenes between Pearl River and Leaf River and between the water-sheds of said two rivers: and southwest of the main dividing ridge dividing the watershed of Pearl River from that of Leaf River and east of the main dividing ridge dividing the watershed of Pearl River from that of Wolf River. that said Wolf River has an independent and separate watershed [fol. 128] of its own, independent and separate from that of Pearl River and of Leaf River, and that the lands involved in this suit are in this Wolf River watershed, are not—in the Pearl River

water-shed, and are not affected, directly or indirectly, by the waters of Pearl River, but are affected only by the waters of Wolf River;

(8) It is further agreed that a greater portion of the lands lying within a mile of Pearl River south of the 31st parallel in Pearl River County and Hancock County had been granted to individuals prior to the Act of Congress of September 28, 1850; but that there was granted to the State of Mississippi, under said Act of Congress, 55,125.18 acres of swamp and overflowed lands in ranges 16 and 17 and 18 in said Pearl River County, lying wholly within the Pearl River watershed and south of the 31st parallel; and it is not known to the parties in this suit how many acres of such lands in what is now Hancock County and lying within the Pearl River watershed were granted to the State of Mississippi by said Act of Congress; and also;

(9) That no patents were issued for swamp lands in Marion or Hancock counties lying south of the 31st parallel the date of the enactment of Chapter 34 Laws of 1852 and the Act of the Legislature of Mississippi approved April 8, 1871, creating the Pearl River Improvement & Navigation Company and making it the Board of Commissioners of the Southern District of Pearl River created by said Chapter 34 Laws of 1852, except on certificates issued by the Treasurer of said Board of Commissioners; that certificates of purchase for several thousand acres of lands situated similarly to the lands involved in this suit were issued by said Board of Commissioners prior [fol. 129] to the creation of said Pearl River Improvement & Navigation Company by the Act of April 8, 1871, and patents were issued to said Pearl River Improvement & Navigation Company under the assumed authority of said Act of April 8, 1871, to several thousand acres of lands situated similarly to the lands involved in this suit; but there were many thousands of acres of lands situated similarly to the lands involved in this suit in said counties south of the 31st parallel for which the said Board of Commissioners never issued certificates of purchase, and also which were never patented to said Pearl River Improvement & Navigation Company, but which were sold by the state and patents therefor were issued by the state under the general law, and amendments thereto, for the disposal of the swamp lands enacted in 1877; and also that all lands in said counties south of the 31st parallel which were patented to the Pearl River Improvement & Navigation Company under said Act of April 8, 1871, creating said Pearl River Improvement & Navigation Company, were afterwards held by the State of Mississippi and patented to divers persons under the said general laws providing for the disposal of the swamp lands;

(10) It is further agreed that an uncertified copy of the map of Pearl River County may be introduced in evidence and considered a part of the record in this case without objection raised by the pleadings as to the location of the lands involved in this suit; and also that a copy of the patent, certified to, from the state of Mississippi to Pearl River Improvement & Navigation Company, through which

complainants claim title to the lands involved in this suit, and also a copy of the patent, certified to, from the state of Mississippi to [fol. 130] Mose Mitchell, through which defendant claims title to the lands involved in — may be introduced in evidence and considered as parts of the record in this case, subject to objection for incompetency or irrelevancy; but no objection will be made on account of the failure of the certified copy of the patent to Pearl River Improvement & Navigation Company to embrace therein any lands contained in the record of said patent which are not involved in this suit and the three companion suits hereinbelow referred to.

(11) It is further agreed that the patent to Pearl River Improvement & Navigation Company offered in evidence by complainants in this case is the same patent which was involved in the case of Southern Pine Company vs. Hall, reported in 105 Fed. Rep. page 84, and the case of Becker vs. Columbia Bank, reported in 73 Sou. Rep. page 798, but that the lands involved in this and three companion suits hereinbelow referred to were not involved in either of said suits:

(12) It is further agreed that there is not on file in the office of the Secretary of State of the State of Mississippi, or in the office of any other officer of said State, either any bond or any evidence of the filing of any bond required by the Act of April 8, 1871, creating the Pearl River Improvement & Navigation Company; but it is agreed that there was at one time on file in the office of the Secretarys State a bond purporting to be the bond required by said Act of April 8, 1871, which is the same bond referred to and set out *per has verba* in the cases of Hardy vs. Hartman, reported in 65 Miss. at page 505, and in Southern Pine Co. vs. Hall, *supra*, and also referred to in Becker vs. Columbia Bank, *supra*.

[fol. 131] (13) It is further agreed that every issue of law and of fact will be settled by the trial of this case which are involved in the three companion cases numbered 227 and 223 and 224 on the Equity Docket of this Court, except such difference in law and facts as may arise out of the difference in the dates on which each defendant acquired his deed to the land involved in each separate suit both in this Court and in any appellate Court to which this or either of said companion cases may be appealed, and that a decree shall be entered in the three companion suits upon this agreed statement of facts, the same to conform to any difference in law and fact arising out of the difference in the dates each defendant acquires his deed and such decrees to be entered at the same time of the entry of the decree in this case; and that if either party is aggrieved at the decree entered in any of said cases and desires to prosecute and appeal therefrom he may prosecute same on bill and answer therein and this agreed statement of facts and the documentary evidence offered under this agreed statement of facts.

(14) It is further agreed that this agreement of facts, and the documentary evidence herein provided to be introduced, together with the pleadings in each cause, shall constitute the record upon

which this and said three companion cases are to be tried, and that the same shall be tried without a stenographer and that it will not be necessary to take a bill of exceptions for the purpose of getting the said documentary evidence and this agreed statement of facts incorporated into the record in said cases for this Court or upon any appellate Court; this agreement, both as to the said documentary evidence and all other things covered by this agreement is made for the convenience of the parties and in order to conserve [fol. 132] the time of the Court; and this agreement and the documentary evidence herein referred to, with the consent of the Court given in open Court, is hereby made a part of the record in this and said companion cases.

T. J. Wills, T. W. Davis, W. L. Wallace, Attorney- for Complainants. Hathorn & Williams, Attorney- for Defendant.

EXHIBIT TO AGREED STATEMENT OF FACTS

Patent

The State of Mississippi

to

Pearl River Navigation & Improvement Co.

THE STATE OF MISSISSIPPI,
Marion County:

To whom these presents shall concern, Greeting:

Whereas by an Act of Congress approved September 28th, 1950, certain lands situated in the state of Mississippi were granted to said state and whereas subsequent to said 28th day of September, 1950, the land- hereinafter described were patented to the state of Mississippi in pursuance to said Act and whereas the Legislature of the State of Mississippi passed an act to incorporate the Pearl River Improvement and Navigation Company and for other purposes said act having become a law by operation of the constitution thereof on the 8th day of April, 1871, and whereas the following described tracts or parcels of land inure to said Company by virtue of said Act [fol. 133] described as follows, to-wit: Lots No. four (4) and five (5) in Section One (1) together with other lands, and South half of North West quarter & East Half of South East Quarter, Section thirty-six (36) all in Township 2 South Range Fifteen (15) West. (Here follows the description of other lands.) Now know ye, that the state of Miss., in consideration of the premises and in compliance of said Act of the Legislature in this case ordered and provided for hath given and granted and by these presents doth give and grant unto the said Pearl River Improvement and Navigation Company and to their successors and assigns the said tracts of land hereinafter described to have and to hold the same together with all

the rights, privileges, immunities and appurtenances thereto belonging unto the said Pearl River Improvement and Navigation Company and to their successors and assigns forever.

In testimony whereof I, J. L. Alcorn, Governor of the state aforesaid, hath caused these letters to be made patent and the great seal of the state to be thereto affixed.

Given under my hand and seal at the City of Jackson, the 27th day of June, 1871, in the year of our Lord One Thousand Eight Hundred and Seventy One.

J. L. Alcorn, Governor. James Lynch, Sect. of State.

Filed for record March 24th, 1873. John Applewhite, Clerk.

Duly recorded March 24th, 1873. John Applewhite, Clerk.

[fol. 134] THE STATE OF MISSISSIPPI,
Marion County, First District:

I, C. G. Mayson, Clerk of the Chancery Court in and for said County and State, hereby certify that the foregoing pages, beginning at line No. 36, on page 204, and ending at line No. 15 on page 215 is a true, correct copy of the record of a certain deed of conveyance as the same appears on record on pages 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, and 428 in book "G" of the records of deeds in my office at Columbia in said county and state.

Given under my hand and official seal at Columbia in said county and state, this January 17th, 1898.

C. G. Mayson, Clerk, by J. T. Bennett, D. C.

Clerk's Certificate

STATE OF MISSISSIPPI,
Pearl River County:

I, H. K. Rouse, Clerk of the Chancery Court in and for said county and state, hereby certify that the foregoing pages contain a true and complete copy of a patent from the State of Mississippi to the Pearl River Improvement and Navigation Company, in so far as it relates to the S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Section 36, Township 2 South, Range 15 West, as the same appears of record in my office in Land Deed Record No. 4 on page 204 to 215, both inclusive and forming a part of the transcribed records of Marion County Mississippi.

Given under my hand and seal of office, this the 9th day of June, 1923.

H. K. Rouse, Chancery Clerk.

[fol. 135] EXHIBIT TO AGREED STATEMENT OF FACTS

No. 2368

Swamp Land Patent

State of Mississippi to all to who- these presentes shall come, Greeting:

Whereas, by an Act of the Legislature of the State of Mississippi, approved February 1st, 1877, entitled "An Act to revive, amend and consolidate the various acts relative to the swamp lands donated to the state under Act of Congress dated 28th of September, 1850, and whereas, the commissioner having reported that to Mose Mitchell purchased the following described lands in the County of Marion, to-wit: S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ Section 36, T. 2. S. R. 15 W. and S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ Section No. 9 Township 1 S. Range 16 West, containing Two Hundred & thirty seven & $\frac{24}{100}$ acres, at Twenty five (25) cents per acre, amounting to the sum of (\$59.32) Fifty Nine & $\frac{32}{100}$ Dollars.

Now know ye, that the State of Mississippi in consideration of the premises, and in conformity with said act of the Legislature in such case made and provided, hath given and granted and by these presents doth give and grant unto the said Mose Mitchell, and to his heirs and assigns, the said tract of land above described to have and to hold same together with all the rights, privileges, immunities and appurtenances thereunto belonging unto the said Mose Mitchell and to his heirs and assigns forever.

In witness whereof, I Robert Lowery, Governor of the state aforesaid, have caused these letters to be made patent, and the Great Seal of the state to be hereunto affixed.

[fol. 136] Given under my hand at the city of Jackson the 7th day of December in the year of our Lord, One Thousand, Eight Hundred and Eighty three.

By the Governor.

Robert Lowery. Henry C. Myers, Secretary of State.

Filed for record at 7 o'clock A. M. May 28th, 1885. A. G. Webb, Clerk.

Recorded May 28th, 1885. A. G. Webb, Clerk.

THE STATE OF MISSISSIPPI,
Marion County, First Dist.:

I, C. G. Mason, Clerk of the Chancery Court in and for said county and state, hereby certify that the foregoing pages beginning at line No. 1 on page 166 and ending at line No. 40 on page 166, is a true, correct and complete copy of a certain Deed of Conveyance as the same appears of record on pages 257 & 258, Book K, Record of Deeds in my office at Columbia, in said county and state.

Given under my hand and official seal of office at Columbia in said county and state, this 2nd, day of February, 1898.

C. G. Mayson, Clerk, by J. T. Bennett, D. C.

[fol. 137] STATE OF MISSISSIPPI,
Pearl River County:

I, H. K. Rouse, Clerk of the Chancery Court of Pearl River County, Mississippi, and having in my custody as such official the Land Deed Records of Pearl River County, Mississippi, do hereby certify that the foregoing is a true and correct copy of the patent from the State of Mississippi to Mose Mitchell, as the same appears of record in Book 5 page 166 of the Land Deed Records of Pearl River County, Mississippi, now on file in my office.

Witness my signature and official seal this the 9th day of June, 1923.

H. K. Rouse, Chancery Clerk.

Defendants were to furnish blue print copy of map having order to withdraw original in evidence, which I have; but the print has not yet arrived.

Geo. P. Money, D. C., Biloxi.

[fol. 138] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—Filed June 13, 1923

This day there came on to be heard before the Court, upon agreement entered in open Court by the parties to the four above styled and numbered causes that the same should be consolidated and tried together and that one decree should be entered herein making final disposition of said four consolidated causes, the above numbered and styled four consolidated causes, the same having come on to be heard upon the bill and answer in each case, the agreed statement of facts this day filed in said causes, and the documentary evidence referred to in said agreed statement of facts, viz: the patent from the state of Mississippi to Pearl River Improvement & Navigation Company offered in evidence by complainant and filed this day by the Clerk [fol. 139] of this Court, and the patent from the State of Mississippi to Mose Mitchell offered in evidence by the defendants in each case and also the map of Pearl River County offered in evidence by the defendant in each case and both filed this day by the Clerk of this Court; and the Court having heard and considered the same, and having heard and considered the arguments of counsel; is of the opinion that the complainants are not vested with the title to the lands described in either of said suits, but that the defendant named in each suit is vested with title to the lands described in such suit,

and that complainants are not entitled to the relief prayed for in either of said suits;

It is, therefore, ordered, adjudged and decreed that the complainants are not the owners of the lands involved in said cause No. 221 and therein described as N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 36 in Township 2 South, Range 15 West, but that the defendant in said cause, Anna F. C. Martin, is the owner thereof; and further that the complainants are not the owners of the lands involved in said cause No. 222 and therein described as S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 36 in Township 2 South, Range 15 west, but that the defendant in said cause, Francis C. Martin, is the owner thereof; and further that the complainants are not the owners of the lands involved in said cause No. 223 and therein described as S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Section 36 in Township 2 South, Range 15 West, but that the defendant in said cause, H. P. Lewis, is the owner thereof; and further that the complainants are not the owners of the lands involved in said cause No. 224 and therein described as S. E. $\frac{1}{4}$ of Section 36 in Township 2 South, Range 15 West, but that the defendant in said cause, George Lawrence, is the owner thereof;

It is further ordered that the said complainants be and they are [fol. 140] hereby denied the relief prayed for in each of said causes, and that said causes and each of them be and the same are hereby dismissed at the cost, in each case, of the said complainants for all of which let proper process issue, to which action of the Court complainants then and there excepted.

Ordered, adjudged and decreed this June 13th, A. D. 1923.

E. R. Holmes, District Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL

To the Honorable Edwin R. Holmes, District Judge for the Southern Division of the Southern District of the State of Mississippi:

Come the Edward Hine Yellow Pine Trustees, complainants in the consolidated causes herein, and show unto the Court that they [fol. 141] feel aggrieved at the order and decree made and entered in the District Court of the United States for the Southern Division of the Southern District of Mississippi, in the above entitled, consolidated causes on the 13th day of June, 1923, wherein it was adjudged that the complainants were not entitled to the relief sought in the bill of complaint as contained in the prayer for the relief therein, and ordered that said bill of complaint should be dismissed; and hereby pray an appeal to the United States Circuit Court of Appeals for the Fifth Circuit from said decree, for the reasons set forth in the assignment of error filed herewith. They further pray

the Court that said appeal may be granted with a supersedeas to the said decree, and that the Court may fix the amount of the bond to be given, necessary to perfect said appeal.

Davis & Wallace, T. J. Wills, Attorney for Complainants.

[fol. 142]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL

On the motion of T. J. Wills, Esquire, Solicitor for Complainants, it is hereby ordered that an appeal to the Circuit Court of Appeals for the Fifth Circuit from the decrees heretofore filed and entered in the foregoing consolidated causes, be and the same is hereby allowed, and that a certified copy of the record, evidence, and all other proceedings be forthwith transmitted to the Circuit Court of Appeals. It is ordered that the bond on this appeal be fixed at \$500.00 and upon the execution and approval of said bond the same shall operate as a supersedeas in said causes.

Ordered and decreed on this, the 19th day of June, 1923.

E. R. Holmes, District Judge.

[fols. 143 & 144] BOND ON APPEAL FOR \$500—Approved and filed;
omitted in printing

[fol. 145]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

Come the complainants, the Edward Hines Yellow Pine Trustees, by their solicitors, and assigns the following errors upon which they will rely for the prosecution of an appeal in this cause, from a decree made and entered in this Court on the 13th day of June, 1923.

First. The District Court erred in denying the relief prayed for by complainants and in dismissing the bills of complaint.

Second. The District Court erred in holding that the defendant named in each suit is vested with the title to the lands described in said suits.

Third. The District erred in overruling the decision of the Circuit Court of Appeals, in the case of the Southern Pine Company vs. [fol. 146] Hall, reported in 105 Federal Reporter, P. 84.

Fourth. The District Court erred in holding that it was bound by the decisions of the Supreme Court of the State of Mississippi, and in following said decisions to the extent of overruling the said case of the Southern Pine Company vs. Hall, *supra*, and the opinion of the Supreme Court of the United States, dismissing the writ of error in said cause.

Fifth. The District Court erred in refusing to follow the decision of Southern Pine Company vs. Hall, *supra*, holding that the patent from the State of Mississippi to the Pearl River Improvement and Navigation Company was a valid patent, which same patent was in issue in this case, and which decision in the Southern Pine Company vs. Hall, had become a rule of property, and *by* which decree of the Court entered in this cause holding said patent void *is* in violation of the rights of complainants in holding the land conveyed in said patents as a rule of property, under which the said complainants acquired a title to said lands.

Wherefore, the said complainants herein pray that the said decree be reversed, vacated and set aside, and the said cause be remanded, with direction to the District Court to grant complainants the relief sought in the bills of complaint, and prayed for in the prayer thereto.

Davis & Wallace, T. J. Wills, Attorneys for Complainants.

[fol. 147] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL

To F. C. Hathorn, Esq., and E. B. Williams, Esq.:

This is to advise you that we have this day filed in the office of the Clerk of the District Court of the United States for the Southern Division of the Southern District of the State of Mississippi out [our] perfected appeal and bond as approved by the District Judge of this Court, together with the assignment of errors and *præcipe*, a true copy of which is herewith transmitted to you by registered mail.

Davis & Wallace, T. J. Wills, Attorneys for Complainants.

I, T. J. Wills, one of the solicitors for the complainants in the foregoing cause, certify that I have this day mailed to F. C. Hathorn [fol. 148] and E. B. Williams, solicitors of record for defendants, a true and correct copy of the assignment of error and *præcipe* and order of the District Judge in this said cause.

T. J. Wills, Attorney for Complainants.

IN UNITED STATES DISTRICT COURT

[Title omitted]

PRECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the District Court in and for the Southern Division of the Southern District of Mississippi:

You will please include in your transcript of the record on appeal in the foregoing cause the following, to-wit:

[fol. 149] First. Complainants' bill of complaint in each of the four consolidated suits, Nos. 221, 222, 223, and 224 on the Equity Docket.

Second. The answer of the defendants filed in each of said four causes.

Third. The decree of the Court, consolidating the four causes.

Fourth. The agreed statement of facts introduced in evidence, and the copy of the patent introduced by complainants and copy of the patent introduced by defendants, and the map of Pearl River County introduced by defendants.

Fifth. The decree of the Court denying the relief prayed for and dismissing the bills of complaint.

Sixth. The petition of the complainants for an appeal with supersedeas from the decree of the Court denying the relief and dismissing the bills.

Seventh. The order of the Court allowing an appeal with supersedeas.

Eighth. Bond filed by complainants for an appeal in accordance with the order of the Court allowing said appeal.

Ninth. Citation to the defendants with waiver thereon.

Tenth. Assignment of error with prayer for reversal of the decree of the Court, denying the relief and dismissing the bills of complaint.

[fol. 150] Eleventh. Notice to defendants of appeal.

Twelfth. The certificate of the Clerk authenticating the transcript of the record on appeal.

Thirteenth. The præcipe filed herein.

Davis & Wallace, T. J. Wills, Attorneys for Complainants.

IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

I, Jack Thompson, Clerk of the District Court of the United States for the Southern District of Mississippi do hereby certify that the foregoing is a true and correct transcript of the records in the foregoing cases as the same appears of record in my office at Biloxi, Miss.

Witness my hand and seal of said Court hereunto affixed at Jackson in said District this July 12, 1923.

Jack Thompson, Clerk. (Seal.)

[fol. 151]

CAPTION—Omitted

[fol. 151a] UNITED STATES CIRCUIT COURT OF APPEALS

No. 4181

Extract from the Minutes of January 8th, 1924

EDWARD HINES YELLOW PINE TRUSTEES

VERSUS

ANNA F. C. MARTIN et als.

ARGUMENT AND SUBMISSION

On this day this cause was called, and, after argument by T. J. Wills, Esq., for appellant, and F. C. Hathorn, Esq., for appellees, was submitted to the Court.

[fol. 152] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

OPINION OF THE COURT FILED—January 16th, 1924

Appeal from the District Court of the United States for the Southern District of Mississippi

T. J. Wills and W. S. Wallace, (Wallace & Davis on the brief),
for Appellants.

F. C. Hathorn, (Hathorn & Williams on the brief) for Appellees.

Before Walker and Bryan, Circuit Judges, and Call, District Judge.

CALL, District Judge:

The appellants as complainants below filed four bills separately on the chancery side of the Court against the individual defendants, describing pieces of property as follows: Anna F. C. Martin, the N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$; F. C. Martin, S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$; H. P. Lewis, S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$; and George Lawrence, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ all in Section 36, Twp. 2, South, of Range 15 West; praying in each bill to have the Court decree title in them and remove any claim of the defendant as a cloud upon their title. Each defendant answered the bill denying complainants' title on various grounds and alleging title in himself or herself.

[fol. 153] These suits were subsequently consolidated and tried before the District Judge as one suit, upon the agreed statement of facts and documentary evidence, and a decree rendered whereby it was adjudged that the title to the lands was vested in the defendants and the prayers of the bills denied.

The agreed statement of facts among other things stipulated that the lands in question were acquired by the State of Mississippi from the United States by Act of Congress approved September 28th 1850; that whatever title complainants have depends upon the patent issued to the Pearl River Improvement & Navigation Company, by the State of Mississippi, June 27th, 1871, and vested in the complainants by mesne conveyances, the production of which is waived; the complainants acquired their title January 1st 1918; That whatever title defendants have was acquired through the patent issued by the State of Mississippi, December 7th 1883, to Mose Mitchell, through mesne conveyances, the production of which is waived.

That the taxes on the land were paid by the predecessors in title of the defendants for the years 1892, 1903 and 1905; that the complainants or their predecessors in title paid the taxes for the remaining years from 1890 to 1922 inclusive, and that the parties do not know who paid such taxes prior to 1890.

It is further admitted that the patent to the Pearl River Improvement and Navigation Company, under which complainants claim is the same patent involved in the cases of Southern Pine Co., vs. Hall, 105 Fed. 84, and Becker vs. Columbia Bank, 73 So. 798, [fol. 154] but these particular lands were not involved in those suits; that there was a bond filed in the office of the Secretary of State purporting to be the bond required by the Act of April 8th 1871 of the Legislature of the State of Mississippi, which bond is set out in words in the cases of Hardy vs. Hartman, 65 Miss. 505; Southern Pine Co. vs. Hall, and Becker vs. Columbia Bank, *supra*.

Pursuant to this agreed statement of facts, a copy of the patent to the Pearl River Improvement & Navigation Company and a copy of the patent to Mose Mitchell were introduced and filed in evidence.

The District Judge in the trial and disposition of the cases followed the decisions of the Supreme Court of Mississippi in the construction of the Act of the Mississippi Legislature of 1871, rather than the decision of the Circuit Court of Appeals in the *Southern Pine Co. vs. Hall*, *supra*.

In the case of *Hardy vs. Hartman*, 65 Miss. 505, the Supreme Court of Mississippi in 1888 decided that the giving the bond required by Section 5 of the Act of 1871 incorporating the Pearl River Improvement & Navigation Company, was a condition precedent to the issuance of the patent provided for in said Act; that this condition precedent had not been complied with before the patent, the basis of complainants' title, was issued to the Company and therefore such patent was void and did not divest the title of the State.

The bond referred to in the agreed statement of facts is set out in the statement of the above case, and is as follows:

[fol. 155]

"Bond

"Pearl River Improvement and Navigation Company

"Know all men by these presents, that we, Walter P. Billings, Samuel A. Vose, A. Warner, O. C. French, are held and firmly bound unto the State of Mississippi in the sum of fifty thousand dollars, the payment of which well and truly to be made, we bind ourselves, our heirs and executors, jointly and severally, by these presents. The condition of the above bond is such, that whereas by an Act of the Legislature of the State of Mississippi, entitled, 'An Act to incorporate the Pearl River Improvement and Navigation Company, and for other purposes,' a company was incorporated called the Pearl River Improvement & Navigation Company, which company is charged with certain duties and bound by certain conditions in said Act specified. Now, if said company will well and truly perform, or cause to be performed, all the acts and things mentioned in said act of incorporation, and comply with all the terms and conditions in accordance with the tenor and meaning of said act, then this bond to be void, otherwise to remain in full force and effect.

"In witness whereof said persons have hereunto set their hands and seals this 7th day of April, 1871.

W. P. Billings (Seal), (by S. A. Vose, His Attorney).
S. A. Vose. (Seal.) A. Warner. (Seal.) O. C. French.
(Seal.)

"Approved May 12th 1871. J. L. Alcorn, Governor."

The question of the validity of the Patent to the Pearl River Improvement and Navigation Company, was again before that Court in *Becker vs. Columbia Bank*, 73 So. 798, when the Court [fol. 156] again held the patent void and declared the former decision to be a rule of property in the State. Since the decision of this case, two other cases have been before the Supreme Court of Mississippi. In these cases the Court reversed the case awarding

damages to the State and affirmed the chancery decree dismissing the bill. On suggestion of error seeking to have the Court declare that the distinction drawn in that opinion between that case and *Tynes vs. Southern Pine Company*, unsound, they say "We are not concerned here with the correctness of the decision in *Hardy vs. Hartman* and the rule there applied, whether correct or not to titles derived through the patent issued to the Pearl River Improvement and Navigation Company, has become a rule of property and will not be departed from."

In the case of *Southern Pine Co. vs. Hall*, 105 Fed. 84, the Circuit Court of Appeals reached the conclusion that the bond was a compliance with the Statute and the patent issued to the Pearl River Improvement & Navigation Company was valid. The Supreme Court of the United States refused a certiorari in this case.

We have therefore the question whether the rule of title to real property as decided by the Supreme Court of the State of Mississippi should be applied in this case as was done by the District Judge. We think that is the proper rule, and that there is no error in the decree. There cannot be two contradictory rules of title to real property dependent upon the statutes of a state. The construction of such statutes by the highest court of the State is binding upon the Courts of the United States in cases not falling within some narrow exceptions.

[fol. 157] This rule of property has existed in the State of Mississippi since 1888, and being such it will be applied by this Court in deciding cases arising under the Statute.

As said by the Supreme Court in the case of *Jackson ex dem. St. John vs. Chew*, 12 Wheat. 161, "The inquiry is very much narrowed, by applying the rule which has uniformly governed this court, that where any principle of law, establishing a rule of real property, has been settled in the state courts, the same rule will be applied by this court, that would be applied by the state tribunals. This is a principle so obviously just, and so indispensably necessary, under our system of government, that it cannot be lost sight of."

The same rule was applied in the case of *James H. Suydam vs. Wm. H. Williamson*, 24 Howard 427, and recognized by many decisions of the Supreme Court following.

The decree of the District Court is affirmed.

[fol. 158] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

JUDGMENT

Extract from the Minutes of January 16th, 1924

This cause came on to be heard on the transcript from the District Court of the United States for the Southern District of Mississippi, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellant, Edward Hines Yellow Pine Trustees, and the sureties on the appeal bond herein, W. L. Wallace, T. W. Davis and T. J. Wills, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 159] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PETITION FOR REHEARING FILED—February 2nd, 1924

Come the appellants in the above styled cause and petition the court to grant them a new hearing in this cause for the reasons to be hereinafter set forth.

The record in this case shows on pages 2, 3 and 4 thereof, the deraignment of title by which complainants acquired the title to said lands. This deraignment of title sets out the book and page of land deed records where the deeds are recorded, and on P. 4, Sub-division "h," this language is used in the bill:

"Reference to the above instruments and the records in which the same are recorded are prayed to be taken and considered as exhibits to this bill as if the same were copied herein."

[fol. 160] In the agreed statement of facts this agreement is made:

"That whatever title, if any, to said lands was vested in the Pearl River Improvement and Navigation Company by the patent offered in evidence by complainants in this cause, passed to and is now claimed by the complainants in this cause by virtue of mesne conveyances from the Pearl River Improvement and Navigation Company to complainants, and that the introduction of evidence by complainants of a chain of title connecting said complainants with the title, if any, that vested in the Pearl River Improvement and Navigation Company under said patent, is hereby waived."

The allegations in the bill of complaint and the agreed statement of facts waiving the introduction of the deeds referred to in the said bill constituting complainants' chain of title, was a legal admission of the chain of title so pleaded by complainants.

By reference to the bill of complaint, it will be observed that it is charged and admitted to be a fact that November 20, 1872, the Pearl River Improvement and Navigation Company, for a valuable consideration, conveyed the lands to M. S. Baldwin; that on April 17, 1873, M. S. Baldwin, for a valuable consideration, conveyed the lands to Israel Hall; that on the 30th day of April, 1889,

Israel Hall died testate, leaving Olivia B. Hall as his sole devisee and legatee to whom the lands owned by him passed under the terms of said will. By reference to the case of the Southern Pine Company vs. Hall, 105 Federal P. 84, it will be observed that the conveyances herein set out are the identical conveyances in the chain of title under consideration by this court in that case. For a valuable consideration the title had passed to Baldwin, and subsequent [fol. 161] thereto, for a valuable consideration, the title had passed to Hall, prior to the opinion of the Supreme Court of Mississippi in Hardy vs. Hartman, 65 Miss. 505. The agreed statement of facts on P. 130 of the record, agrees that the patent in evidence is the same patent considered in the case of the Southern Pine Company vs. Hall, supra. The allegations of the bill show that it is the same chain of title considered in that case. While the lands here involved were not embraced in the Hall case, the record in this case shows that Olivia B. Hall was the owner of these lands under the same patent and by the same mesne conveyances as the lands under consideration by this court, in the Hall case, supra, and that she owned them at the time that case was decided.

We desire to call the court's attention further to the fact that Olivia B. Hall was thus vested with the title to the lands, under consideration herein, prior to the decision of the Supreme Court of Mississippi in Hardy vs. Hartman, supra.

We think that it is a principle of law so well-settled that this court will recognize it without the citation of authority upon which it rests, that if Olivia B. Hall's title to these lands was a good and valid title in her, then her subsequent conveyances would clothe purchasers in the chain of title, or by mesne conveyances under her with the same character of title held by her, to-wit, a good and valid title.

This court in affirming the decree of the District Court in this cause, may we respectfully suggest, overlooked the above fact and departed from the principles of law that control under such state of case as announced by the Supreme Court of the United States, and followed a different rule of law announced by that Court where the facts are quite different, which will be pointed out further infra this petition.

[fol. 162] In Hardy vs. Hartman, supra, the question of the statute was not before the court and not considered by it. The effect of that case is to hold the Act of 1871 constitutional, valid and binding. All that that case passed on was the construction of an instrument designated as a bond. The court's interpretation and classification of the instrument was not predicated upon any statutory provision but upon the state court's interpretation of instruments under the general and commercial law of the state. It held the instrument not to be a bond.

On matters of general and commercial law, the courts of the United States exercise an independent judgment and decide such questions for themselves.

Adelbert College vs. Wabash R. R. Co., 171 Fed. 805. In speak-

ing of the rule that the United States courts will follow the settled interpretation of the state court of the state statute the Court said:

"This rule obviously implies that the state decision which is to foreclose the independent judgment of the court of the United States must have been one based alone upon the statute construed, for, if extraneous conditions were involved, the judicial mind was not applied to the precise question, and the decision, though persuasive, has not the obligatory effect of a clear case of statutory construction.

"*Venice vs. Murdock*, 92 U. S. 494.

"*Tulare Irrigation District vs. Shepard*, 185 U. S. 1.

"*Roberts vs. Bolles*, 101 U. S. 119. Etc."

When the case of *Southern Pine Company vs. Hall*, *supra*, came before this court for consideration, this court recognized the fact that *Hardy vs. Hartman* had not construed a statute but rather was [fol. 163] an interpretation of an instrument under the general and commercial law and exercised an independent judgment in its interpretation of that instrument. The court used this language:

"This case, we think, cannot be held a judicial construction of the statute on the point here involved."

By the exercise of an independent judgment in the construction of an instrument under the general and commercial law under the authority laid down by the Supreme Court of the United States this court construed the bond under consideration to be a good and valid bond, and that patent issued thereon valid and passing the title. This was not an independent construction of a statute by the United States court, it was the exercise of the court's independent judgment in the construction of an instrument under the general and commercial law under those powers given to it as a court of concurrent jurisdiction. Such powers must be recognized and asserted by the United States courts in order that they may maintain their co-ordinate jurisdiction.

By the case of the *Southern Pine Company vs. Hall*, this court established as a rule of property the validity of the title to the lands of Olivia B. Hall held under the Pearl River Improvement and Navigation Company patent embraced in that litigation. This court did more than that. It established as a rule of property that the Pearl River Improvement and Navigation Company patent was a valid and binding patent, and titles held thereunder by Olivia B. Hall to lands at the time of that decision by the same chain of title, though not embraced in the litigation, to be a good and valid title.

Upon the faith and credit accorded the United States courts in the exercise of their independent judgment on matters of general and commercial law, as expressed in the *Hall* case, Olivia B. Hall [fol. 164] sold these lands and the purchasers thereof purchased, and by mesne conveyances these complainants acquired the title thereto. Complainants were citizens of Illinois. They gave full faith and credit to the opinion of this court in the *Hall* case; they relied upon

the integrity of this court as a court of co-ordinate and not subordinate jurisdiction. In now overruling the Hall case, the court has deprived complainants of their property acquired under the faith and credit of its independent judgment in passing upon a matter over which it has co-ordinate powers and full jurisdiction.

Where the court has deliberately decided a contract to be valid and property rights have accrued under the faith of that ruling, it will decline to reverse its decisions though subsequent thereto, the highest court of the state decided that the contract is invalid.

Rowan and Harris vs. Runnels, 5 How. 134.

The court said in the above case:

"Acting under the opinion thus deliberately given by this court, we can hardly be required by any comity or respect for the state courts to surrender our judgment to decisions since made in the state and declare contracts to be void, which upon full consideration we have pronounced to be valid."

Hardy vs. Hartman was considered by this court in the Hall case. This court refused to recognize it as a rule of property. It was not a construction of the state statutes or state constitution. This court, in the Hall case, exercised its independent judgment. The question naturally arises: How long did that independent judgment expressed by this court remain the law? When did that independent judgment meet the twilight zone and the independency of this court submerge into dependency upon the State Court?

[fol. 165] An examination of the opinion of the court in this case will show that it is correct were the question before this court for the first time in this case. Where the court had previously considered the question and exercised its independent judgment and by the exercise of that independent judgment established a rule of property upon the faith and credit of which property rights have vested, a different rule of law applies from the one controlling the decision in this case. The true rule is found in the case of Rowan and Harris vs. Runnels, supra. See to the same effect

Adelbert College vs. Wabash R. R. Co., supra.

Anderson vs. Santa Anna, 116 U. S. 356.

Carroll County vs. Smith, 111 U. S. 556.

Loeb vs. Trustees, 179 U. S. 492.

The cases on this point are too numerous to cite here.

We respectfully submit to the court that in deciding this case the court has applied the wrong rule of law and principle governing its decisions. Wherefore, for the reasons herein set forth, the appellants and petitioners here, respectfully pray this Honorable Court to grant them a rehearing of said cause.

Davis & Wallace, T. J. Wills, Attorneys for Appellants.

I, T. J. Wills, one of the attorneys for appellants herein, do hereby certify that in my judgment the foregoing petition for a rehearing is well-founded; and that the same is not interposed for delay.

T. J. Wills, Attorney for Appellants.

[fol. 166] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Extracts from the Minutes of February 20th, 1924

ORDER OVERRULING PETITION FOR REHEARING

It is ordered by the Court that the petition for re-hearing, filed in this cause, be, and the same is hereby, denied.

[fol. 167] IN UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 151 to 166 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 4181, wherein Edward Hines Yellow Pine Trustees is appellant, and Anna F. C. Martin, et als., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 150 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 14th day of April, A. D. 1924.

Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal of United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 168] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1923

No. 971

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

ORDER GRANTING PETITION FOR CERTIORARI—Filed May 12, 1924

On consideration of the petition for a writ of certiorari herein to the United States Circuit Court of Appeals for the Fifth Circuit, and of the argument of counsel thereupon had,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.

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Office Supreme Court, U. S.

FILED

APR 19 1924

WM. R. STANSBURY

CLERK

No. **363**

**IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA**

EDWARD HINES YELLOW PINE TRUSTEES,

Petitioners,

vs.

ANNA F. C. MARTIN ET ALS., Respondents

**T. W. DAVIS,
T. J. WILLS,
Attorneys for Petitioners.**



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**IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA**

**EDWARD HINES YELLOW PINE TRUSTEES,
Petitioners,**

vs.

ANNA F. C. MARTIN ET ALS., Respondents

To the Honorable the Supreme Court of the United States:

The petition of the Edward Hines Yellow Pine Trustees composed of Edward Hines, C. F. Wiehe and L. L. Barth, trustees under trust agreement executed under the name of the Edward Hines Yellow Pine Trustees, petitioners, would most respectfully show to this Honorable Court:

(1). That they filed in the District Court of the United States for the Southern Division of the Southern District of Mississippi four bills in equity on, to-wit, the 15th day of October, 1922. That the said four bills in equity were respectively against Anna F. C. Martin, F. C. Martin, H. P. Lewis and George Lawrence. The said bills in equity prayed for the cancellation of the outstanding deeds and evidences of title held by the four aforementioned defendants to the Southeast Quarter of the Southeast Quarter and Northeast Quarter of the Southeast Quarter and the Southwest Quarter of the Southwest Quarter, Southeast Quarter of the Northwest Quarter, all

in Section 36, Township 2, South of Range 15 West, in Pearl River County, Mississippi; and for the confirmation of complainants' title to the above described land.

(2). The four bills of complaint filed in the District Court were in substantially the same language, except as to the parties defendant and the land embraced therein. Complaints deraigned their title from the United States Government The Act of Congress of September 28th, 1850, known as the Swamp and Overflowed Land Act, donated the said lands to the State of Mississippi. That by Act of the Legislature of the State of Mississippi of April 8, 1871, the said lands were donated to the Pearl River Improvement and Navigation Company, and under said Act on the 27th day of June, 1871, patent from the said State of Mississippi was duly executed and delivered to the said company. That on the 20th day of November, 1872, said Pearl River Improvement and Navigation Company sold, and for a valuable consideration, conveyed said lands to M S. Baldwin; that on the 17th day of April, 1873, M. S. Baldwin, for a valuable consideration, sold and conveyed the land to Israel Hall; that on April 30, 1889, said Israel Hall died testate, by which testamentary instrument he devised the said lands to his wife, Olivia B. Hall; that on the 23rd of July, 1900, Olivia B. Hall conveyed the said lands to Charlotte H. Eastman; that on July 5, 1905, Charlotte H. Eastman conveyed the said lands to the Wyatt Lumber Company, and on January 1, 1918, Wyatt Lumber Company conveyed the said lands to the complainants, petitioners herein.

(3). The bill of complaint further set forth that the State of Mississippi, by a junior patent of December 7, 1883, patented said lands to Mose Mitchell; and that by mesne conveyances, the said Mose Mitchell had attempted to convey the said lands to the defendants named in the said bills of complaint; and that said conveyances operated as a cloud upon complainants' title to said lands.

(4). The bills of complaint further set forth that the record title through which the defendants asserted the pretended claim, passed through the Southern Pine Company; that in 1900, while Olivia B. Hall was the owner of the said lands, together with other lands coming by the same chain of title to her, and long prior to the time when complainants acquired the title thereto, the validity of the said title and the validity of the patent issued on the 27th day of June, 1871, under and by virtue of the authority of the Acts of the Legislature of the State of Mississippi of April 8, 1871, was litigated in the District Court of the United States for the Southern Division of the Southern District of Mississippi. That said litigation resulted in a decree being entered adjudicating the said patent to be valid and the title in Olivia B. Hall held under said patent to be the true, legal and equitable title to said lands. The bills of complaint further charge that thereafter the said decree was upheld by the Circuit Court of Appeals of the Fifth Circuit, and the decree of the District Court affirmed in the case of Southern Pine Company vs. Hall, 105 Federal P. 84; 44 C. C. A., P. 363; and that the said decree of the District Court and the judgment of the Circuit of Appeals affirming the same was upheld by the Supreme Court of the United States in the same case reported in 180 U. S., P. 639.

(5). The bills of complaint then charge that complainants and their immediate and remote grantors bought the said lands for a valuable consideration and in good faith and upon a clean record title from the State of Mississippi, predicated upon a patent from the State of Mississippi, antedating the patent upon which defendants claim, and as such they were innocent purchasers; and that the said patent and the conveyance through which they claim constituted a contract between the said State of Mississippi and the Pearl River Improvement and Navigation Company, and is the contract receiving judicial sanction, upon which complainants relied in purchasing the said lands as heretofore set out.

(6). The jurisdictional amount giving the Federal Court jurisdiction and the diversity of citizenship were shown. The prayer for relief asked that the defendants be required to answer, setting up specifically their claim of title and praying that the said evidences of pretended title of defendants be cancelled as clouds upon complainants' title and complainants decreed to be the sole and only real, true and legal owners of said lands.

(7). The defendants answered and set up their title under the patent from the State of Mississippi to Mose Mitchell and a perfect record chain of title from the said Mose Mitchell to the defendants. Defendants asserted the validity of their title and attacked the validity of complainants' title, asserting that the patent from the State of Mississippi to the Pearl River Improvement and Navigation Company was null and void.

(8). There was an agreed statement of facts in which the chains of title were admitted in the complainants as alleged and in the defendants as set forth. It was further agreed that the patent under which complainants claimed was the same patent adjudicated to be a good and valid patent in Southern Pine Company vs. Hall, by the District Court of the United States and affirmed by the Circuit Court of Appeals, and the Supreme Court of the United States, as hereinbefore referred to. The cases were then consolidated by the district judge and heard upon the bill and answer and the agreed statement of facts. A decree was entered on the 13th day of June, 1923, A. D., in said District Court as follows:

"This day there came on to be heard before the Court, upon agreement entered in open Court by the parties to the four above styled and numbered causes that the same should be consolidated and tried together, and that one decree should be entered herein making final disposition of said four consoli-

dated causes, the above numbered and styled four consolidated causes, the same having come on to be heard upon the bill and answer in each case, the agreed statement of facts this day filed in said causes, and the documentary evidence referred to in said agreed statement of facts, viz, the patent from the State of Mississippi to Pearl River Improvement and Navigation Company offered in evidence by complainant and filed this day by the Clerk of this Court, and the patent from the State of Mississippi to Mose Mitchell offered in evidence by the defendants in each case and also the map of Pearl River County offered in evidence by the defendant in each case and both filed this day by the Clerk of this Court; and the Court having heard and considered the same, and having heard and considered the arguments of counsel, is of the opinion that the complainants are not vested with the title to the lands described in either of said suits, but that the defendant named in each suit is vested with title to the lands described in each suit, and that complainants are not entitled to the relief prayed for in either of said suits;

"It is, therefore, ordered, adjudged and decreed that the complainants are not the owners of the lands involved in said cause No. 221 and therein described as NE Quarter of SE Quarter of Section 36 in Township 2 South, Range 15 West, but that the defendant in said cause, Anna F. C. Martin, is the owner thereof; and further that the complainants are not the owners of the lands involved in said cause No. 222 and therein described as SE Quarter of SE.

Quarter of Section 36 in Township 2 South, Range 15 West, but that the defendant in said cause, Francis C. Martin, is the owner thereof; and further that the complainants are not the owners of the land involved in said cause No. 223 and therein described as SW Quarter of NW Quarter of Section 36 in Township 2 South, Range 15 West, but that the defendant in said cause, H. P. Lewis, is the owner thereof; and further that the complainants are not the owners of the lands involved in said cause No. 224 and therein described as SE Quarter of NW Quarter of Section 2 South, Range 15 West, but that the defendant in said cause, George Lawrence, is the owner thereof;

"It is further ordered that the said complainants be and they are hereby denied the relief prayed for in each of the said causes, and that said causes and each of them be and the same are hereby dismissed at the cost, in each case, of the said complainants for all of which let proper process issue, to which action of the Court, complainants then and there excepted.

"Ordered, adjudged and decreed this June 13th, A. D. 1923.

"E. R. HOLNES,
District Judge."

(9). That thereafter, to-wit, on the 19th day of June, 1923, an appeal was allowed and perfected, and on the 13th day of August, 1923, a transcript of all the proceedings was filed in the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, Louisiana, and said cause was entered and docketed in said Court of Appeals entitled "EDWARD HINES YEL-

LOW PINE TRUSTEES, APPELLANTS, VS. ANNA F. C. MARTIN ET ALS., APPELLEES," and numbered 4181 on said docket.

(10). That the assignment of error filed in said cause was as follows:

"Come the complainants, the Edward Hines Yellow Pine Trustees, by their solicitors, and assign the following errors upon which they will rely for the prosecution of an appeal in this cause, from a decree made and entered in this Court on the 13th day of June, 1923.

"First. The District Court erred in denying the relief prayed for by complainants and in dismissing the bills of complaint.

"Second. The District Court erred in holding that the defendant named in each suit is vested with the title to the lands described in said suits.

"Third. The District Court erred in overruling the decision of the Circuit Court of Appeals, in the case of the Southern Pine Company vs. Hall, reported in 105 Federal Reporter, P. 84.

"Third. The District Court erred in overruling the decision of the Circuit Court of Appeals, in the case of the Southern Pine Company vs. Hall, reported in 105 Federal Reporter, P. 84.

"Fourth. The District Court erred in holding that it was bound by the decisions of the Supreme Court of the State of Mississippi, and in following said decisions to the extent of overruling the said case of the

Southern Pine Company vs. Hall, supra, and the opinion of the Supreme Court of the United States, dismissing the writ of error in said cause.

"Fifth. The District Court erred in refusing to follow the decision of the Southern Pine Company vs. Hall, supra, holding that the patent from the State of Mississippi to the Pearl River Improvement and Navigation Company was a valid patent, which same patent was in issue in this case, and which decision in the case of Southern Pine Company vs. Hall, had become a rule of property, and by which decree of the Court entered in this cause holding said patent void is in violation of the rights of complainants in holding the land conveyed in said patents as a rule of property, under which the said complainants acquired a title to said lands

"Wherefore, the said complainants herein pray that the said decree be reversed, vacated and set aside, and the said cause be remanded, with direction to the District Court to grant complainants the relief sought in the bills of complaint, and prayed for in the prayer thereto."

(10). That afterwards, to-wit, on the 8th day of January, 1924, the case came on to be heard in the Circuit Court of Appeals before the Honorable Richard Walker, the Honorable Nathan P. Bryan, Circuit judges, and the Honorable Rhydon M. Call, District Judge, sitting. That on the 16th day of January, 1924, a decree was entered in said cause by the Circuit Court of Appeals of the Fifth Circuit as follows:

"This cause came on to be heard on the transcript of the record from the District

Court of the United States for the Southern District of Mississippi, and was argued by counsel;

"On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed.

"It is further ordered, adjudged and decreed that the appellant, Edward Hines Yellow Pine Trustees, and the sureties on the appeal bond herein, W. L. Wallace, T. W. Davis and T. J. Wills, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court."

A copy of the opinion rendered in said cause is attached and marked Appendix "A" to this petition.

(11). Your petitioners are advised that said judgment of the Circuit Court of Appeals is erroneous; and that this Honorable Court should require the case to be certified to it for its review and determination under the Acts of Congress permitting causes made final in the Circuit Court of Appeals to be certified for revision, and especially Section 240 of the Judicial Code, Second Federal Statutes Annotated (second edition), P. 854.

(12). The reasons why the decree of the Circuit Court of Appeals, affirming the decree of the District Court, should be reviewed by the Supreme Court of the United States are as follows:

(13). The decree of the Circuit Court of Appeals affirming the decree of the District Court, denying the relief prayed for in the original bill of complaint and decreeing that the defendants in said bill were the real, true, legal and equitable owners of the land, and in dismissing

the bill of complaint, has overruled a rule of property announced in the case of Southern Pine Company vs. Hall in 105 FEDERAL REPORTER, P. 84, and has deprived complainants of their property acquired under and by virtue of the decision of the Circuit Court of Appeals in said case after the said case was decided and the rule of property announced thereby had become effective. Complainants are citizens of Illinois. Under the rule of property announced in the case of Southern Pine Company vs. Hall and the interpretation by the Court of the validity of the patent there involved, and upon which the title to the land embraced in this case rests, complainants purchased said lands upon the faith and credit of the integrity of that decision.

(14). The construction and judicial determination of the validity or invalidity of the patent upon which the title of complainants was bottomed, did not involve the interpretation of the constitution or statute of the State of Mississippi. Prior to the decision of the Circuit Court of Appeals in the Southern Pine Company case, the case of Hardy vs. Hartman, 65 MISSISSIPPI 509, was decided by the Supreme Court of the State of Mississippi. Hardy vs. Hartman was an interpretation and characterization by the state court of an instrument that had been filed and designated as the bond of the Pearl River Improvement and Navigation Company. The court held that as a matter of general and commercial law the instrument in question was not a bond, and, therefore, the title to the lands did not pass to the company by virtue of the Act of April 8, 1871. No patent had ever issued for the lands under consideration in Hardy vs. Hartman. The Court said, however, that if a patent had issued, it would be void. Thereafter, the case of Southern Pine Company vs. Hall came on for a consideration by the United States Circuit Court of Appeals. The Circuit Court of Appeals reviewed Hardy vs. Hartman and held that the Court had not construed a constitution or statute, but rather had given an interpretation of an instrument under the gen-

eral and commercial law. The Circuit Court of Appeals exercised an independent judgment and placed its own interpretation upon the instrument under the general and on commercial law, which governs cases before it for review. The Circuit Court of Appeals used this language in reference to Hardy vs. Hartman:

"This case, we think, can not be held a judicial construction of the statutes here involved."

The Circuit Court of Appeals held that the instrument ment was a bond, and the patent was valid and passed title. This decision of the Circuit Court of Appeals not only adjudicated the validity of the title to the lands presented in that case, but also the validity of the title to all lands owned by the appellees botttomed upon the patent under consideration.

(15). With this decision of the Circuit Court of Appeals, which has been approved by the Supreme Court of the United States, adjudicating the validity of the patent, complainants purchased the lands in question, relying upon the rule of property announced, and the stability of the opinion of the United States Court in the exercise of its independent judgment in passing upon matters of general and commercial law. They relied upon that authority announced by the Supreme Court of the United States, that in such matters of general and commercial law the United States Courts would exercise their independent judgment. The action of the Circuit Court of Appeals in affirming the decree of the District Court in following Hardy vs. Hartman and refusing to follow Southern Pine Company vs. Hall, has overturned the rule of property announced heretofore by the United States Courts and relied upon by complainants when they purchased the said lands, and thereby has deprived them of their property in violation of their rights guaranteed by the Constitution and laws of the United States. The decision of the Circuit Court of Appeals leaves it an open question

whether federal courts will protect property rights accruing under their decision when it has said positively that it refused to follow the decision of the state court, or whether, after the said property rights have accrued and the state court adheres to its opinion, that the federal courts will treat its own jurisdiction as that of subordinate jurisdiction to the state court, reverse itself and overturn the property rights accruing under its previous decision. To settle this question, this court should review the decision of the Circuit Court of Appeals.

(16). A further reason why this Court should review and reverse the decision of the Circuit Court of Appeals is that the decisions of the Supreme Court of the State of Mississippi were not controlling on that question of title presented in this case. The patent to the Pearl River Improvement and Navigation Company was issued under Chapter of the Laws of Mississippi approved April 8, 1871. Thereafter on November 20, 1872, the Pearl River Improvement and Navigation Company conveyed the lands for a valuable consideration, which conveyance is in the chain of title under which the petitioners herein claim title to said lands. Chapter 114 of the Laws of Mississippi, approved April 19, 1873, approved and ratified the deeds of conveyance previously made by the Pearl River Improvement and Navigation Company and confirmed the title passing thereunder. As to all other lands embraced in the patents, it sought to divest The Pearl River Improvement and Navigation Company of the title thereto. The title to the lands under consideration in the case of *Hardy vs. Hartman*, 65 Mississippi 505, was held under a tax sale of lands patented to the Pearl River Improvement and Navigation Company and abandoned by that company under the provision of the Act of 1873. The lands in that case were not conveyed by the Pearl River Improvement and Navigation Company; and the Act of 1873 in no wise ratified or confirmed said title. The same is true of the title in *Becker vs. Columbia Bank*, 73 Southern Reporter 798. The Supreme Court of the

State of Mississippi has never passed upon the question of the validity of the title to lands held under the Pearl River Improvement and Navigation Company title which had been conveyed prior to the enactment of Chapter 114 of the Acts of 1873. Southern Pine Company vs. Hall passed upon the title of lands so situated. That case passed upon lands similarly situated, to the lands under consideration in this case. The Circuit Court of Appeals in overruling its former decision in Southern Pine Company vs. Hall and in following Hardy vs. Hartman and the Becker case overruled a decision in point and followed the two decisions of the state court that were not in point and not controlling.

(17). WHEREFORE, Your petitioners respectfully pray that a writ of certiorari be issued under the seal of the Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, Louisiana, commanding the Court to certify and send to this Court on a day certain to be designated, a full and complete transcript of the record and all proceedings of the Circuit Court of Appeals had in this cause, to the end that this cause may be reviewed and determined by this Honorable Court as provided by the Acts of Congress approved March 3, 1891, establishing the Circuit Court of Appeals, and defining and regulating their jurisdiction, and any subsequent acts, amendatory or supplementary, thereto; and that the said judgment of the Circuit Court of Appeals be reversed by this Honorable Court; and for such further relief as may seem proper; and as in duty bound your petitioners will ever pray.

T. J. WILLS,
Attorney for Petitioners.

STATE OF MISSISSIPPI

FORREST COUNTY

CITY OF HATTIESBURG.

This day personally appeared before me, a notary public in and for the city of Hattiesburg in the County and state aforesaid, I being an officer authorized under the laws of the State of Mississippi to administer oaths, T. J. Wills, who after being by me first duly sworn, says on oath that he is the attorney for the Edward Hines Yellow Pine Trustees and is authorized to and does make this affidavit on behalf of said trustees; that the matters and things stated in the foregoing petition are all true and correct as stated, as far as he is advised and believes; and that said petition in his opinion ought to be sustained.

T. J. WILLS.

Given under my hand and official seal this 26th day of March, A. D., 1924.

CLOTHILDE LINDSEY,

Notary Public.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The petitioners seek to have this Court review the decision of the Circuit Court of Appeals, affirming the decree of the District Court for the Southern Division of the Southern District of the State of Mississippi. The District Court entered the decree on the 13th day of June, 1923, in which it denied the relief prayed for in the bills of complaint. Complainants prosecuted an appeal to the Circuit Court of Appeals, where the case was affirmed on the 16th day of January, 1924. Thereafter a petition for rehearing was filed, and on the 20th day of February, 1924 the petition was denied and the decree of the court made final.

STATEMENT OF THE PLEADINGS

On the 12th day of October, 1922, the petitioners filed their bills of complaint in the District Court of the United States, praying for the cancellation of outstanding deeds and record evidences of title as clouds upon their title and praying that they be decreed the sole and only, true, legal and equitable owners of the land therein described. The bills of complaint alleged that petitioners' title came from the United States government under Act of September 28, 1850, known as the Swamp and Overflowed Land Act to the State of Mississippi, and patent from the State of Mississippi dated June 27, 1871, to the Pearl River Improvement and Navigation Company, and by mesne conveyances therefrom to petitioners. The bills further alleged that the State of Mississippi issued a junior patent on December 7, 1883, to Mose Mitchell, and that thereafter Mose Mitchell executed a deed purporting to convey said lands, and by instruments subsequently executed, the pretended title of Mose Mitchell passed to

respondents. It was to cancel this junior patent and the conveyances thereunder that the bills in equity were filed in the District Court.

Petitioners in their bills derainged their title from the United States to the State of Mississippi by Act of September, 28, 1850; from the State of Mississippi to the Pearl River Improvement and Navigation Company by patent dated June 27, 1871, authorized by Act of the Legislature of April 7, 1871; that the Pearl River Improvement and Navigation Company, on November 20, 1872, for a valuable consideration, conveyed the said lands to M. S. Baldwin; that on the 17th day of April, 1873, M. S. Baldwin conveyed to Israel Hall; that on April 30, 1889, Israel Hall died, leaving a last will and testament, in which he devised the said lands to his wife, Olivia B. Hall. That on the 23rd of July, 1900, Olivia B. Hall conveyed the said lands to Charlotte H. Eastman; that on July 5, 1905, Charlotte H. Eastman conveyed to the Wyatt Lumber Company; that on January 1, 1918, the Wyatt Lumber Company conveyed to the complainants in the court below.

(There were four original bills filed in the District Court against four separate defendants for the different lands described in the said bills of complaint. The chain of title to complainants as to each separate tract of land was the same, and the chain of title through which the defendants claimed, was identical down to the deed under which each separate defendant held, the grantor in each deed to the defendants being the same.

The defendants filed their separate answers, in which they denied that the complainants were the owners of the said land, and set up title in themselves.

When the causes came on for a hearing, the four cases were consolidated and tried on an agreed statement of facts. The District Court denied the relief prayed for, and decreed that the defendants were the owners of the

lands. The District Court rested its decree on the authority of the decisions of the Supreme Court of the State of Mississippi, overruling the decisions of the Circuit Court of Appeals, which had formerly adjudicated the validity of the said Pearl River Improvement and Navigation Company's patent.

STATEMENT OF FACTS

The case was tried on an agreed statement of facts. The material facts agreed on are these: First, That the complainants derived their title by mesne conveyances from the Pearl River Improvement and Navigation Company, and whatever title that company had under and by virtue of its patent passed to and was held by complainants. It was further agreed that the introduction of evidence by the complainants of the chain of title from the Pearl River Improvement and Navigation Company to complainants was waived. It was further agreed that the patent to the Pearl River Improvement and Navigation Company is the same patent, which was involved in the case of the Southern Pine Company vs. Hall, reported in 105 **Federal Reporter**, P. 84, and the case of Becker vs. the Columbia Bank, 73 **Southern Reporter**, P. 798; but that the lands embraced in the four suits were not involved in either of said suits. The patent from the State to the Pearl River Improvement and Navigation Company was introduced by agreement.

By the agreement it is admitted that the patent under consideration is the same patent considered in Southern Pine Company vs. Hall. The deraignment of title shows that the Pearl River Improvement and Navigation Company parted with the title to this land for a valuable consideration on November 20, 1872. It will further appear by reference to the Hall case, supra, and the deraignment of title that Olivia B. Hall owned the land at the time the Hall case was decided by the Circuit Court of Appeals.

The bill of complaint charges that she owned it, and that it was by inadvertence that the lands were omitted from the bill of complaint in that suit.

The Circuit Court of Appeals stated in its opinion that the District Judge followed the decisions of the Supreme Court of Mississippi in the construction of the Act of the Mississippi Legislature of 1871, rather than the decision of the Circuit Court of Appeals in *Southern Pine Company vs. Hall*.

The Circuit Court of Appeals refused to follow its own decision in the case of *Southern Pine Company vs. Hall*. It overruled that case and followed *Hardy vs. Hartman*, 65 **Mississippi** 505, and *Becker vs. the Columbia Bank*, 73 **Southern Reporter** 798. The Circuit Court of Appeals affirmed the decree of the District Court.

ARGUMENT

COMPLAINANT'S TITLE IS A GOOD AND VALID TITLE. *HARDY VS. HARTMAN* AND *BECKER VS. THE COLUMBIA BANK* ARE NOT APPLICABLE TO THE CASE AT BAR.

The State of Mississippi patented the lands involved here to the Pearl River Improvement and Navigation Company under and by virtue of the Act of April 8, 1871. A copy of the said act is filed as Appendix "B" to this brief. The patent issued on June 27, 1871, is regular in form and was duly recorded. On November 20, 1872, the Pearl River Improvement and Navigation Company, for a valuable consideration, sold the lands here in question to Baldwin. Baldwin, on April 17, 1873, for a valuable consideration, sold and conveyed the said lands to Israel Hall.

On April 19, 1873, Israel Hall was the owner of the said lands by mesne conveyances from the Pearl River Improvement and Navigation Company.

The Legislature of the State of Mississippi enacted Chapter 114 of the Acts of 1873, which act became a law on April 19, 1873. The State by this act legalized, ratified and confirmed the deeds previously made by the Pearl River Improvement and Navigation Company to land, which had passed to it under the Acts of April 8, 1871. A copy of Chapter 114 of the Laws of 1873 is exhibited as Appendix "C" to this brief.

Section 1, Chapter 114 of the laws of 1873 provided that the said Pearl River Improvement and Navigation Company should pay into the state treasury on or before the first day of October, 1873, twenty-five cents per acre for the land which had been patented to said company. It further provided that upon the payment of twenty-five cents per acre, patent should issue for all the lands embraced in the grant and not previously patented. By Section 4 of the said act, it provided that if said payments, as referred to in the first section, are not made, then all the right, title and interest of the company reverted to the State, and by the provision of the act, should rest absolute in the State. Section 5 provided for the surrender of the patents to the Secretary of the State to be redelivered to the company upon its compliance with the provisions of the act in paying the twenty-five cents per acre.

The Pearl River Improvement and Navigation Company, at the time of the enactment of Chapter 114 of the Laws of 1873, had sold and conveyed part of the lands previously patented to it. The lands embraced in this suit had been sold by said company and deed executed therefor to Baldwin. By Section 6 of the said act, the

Legislature protected the purchasers of these lands by legalizing, ratifying and confirming the deeds made by the Pearl River Improvement and Navigation Company.

In *Hardy vs. Hartman*, decided May 31, 1888, Hardy claimed title to the lands there involved under the Act of 1871, granting the lands to the Pearl River Improvement and Navigation Company and a tax sale thereafter in which the said lands were sold to the State of Mississippi and a purchase by him of the said tax title from the State. Hartman's title rested upon a subsequent patent from the State of Mississippi to him.

The lands embraced in the Hartman case were never sold by the Pearl River Improvement and Navigation Company. The legal and logical conclusion to be deduced is that the twenty-five cents per acre was never paid by the Pearl River Improvement and Navigation Company; That the Secretary of the State never redelivered the patents to the said company. The lands abandoned by the said company, and subsequent thereto were sold for taxes.

Under Chapter 114 of the Acts of 1873, the lands donated to the Pearl River Improvement and Navigation Company by the Act of 1871 were divided into two classes and dealt with as such. The first class of lands dealt with were those lands granted to the Pearl River Improvement and Navigation Company, which had not been alienated by it. The second class were those lands donated by the said Pearl River Improvement and Navigation Company, and which the said company sold and conveyed prior to the passage of the said act.

In the Hartman case, the Supreme Court of the State of Mississippi was dealing with those lands coming within the first classification of the act. No patent was shown to have issued to the Pearl River Improvement and Navigation Company, and in the absence of a patent, no title

passed under Chapter 114 of the Acts of 1873. It is true that no reference is made to the laws of 1873 in the opinion of the Court in the Hartman case. But the reason for the result reached can be justified under this law.

In the case of Becker vs. the Columbia Bank, *supra*, the title to the land under consideration was identical with that in the Hartman case. Both cases were passing upon those lands, embraced within the grant to the Pearl River Improvement and Navigation Company and never alienated by that company.

The lands involved in this suit came within the second class of lands dealt with in the Acts of 1873. The sale of the Pearl River Improvement and Navigation Company was specifically ratified and confirmed by Section 6 of the act. Whatever defects or invalidities that might have attached to the original patent were cured by this legislative ratification.

Southern Pine Company vs. Hall, *supra*, was dealing with the lands embraced in the second class and identical in title with the lands here under consideration. The Hall case is the only case in any court that has ever passed upon the title to lands situated and classified as are these lands. The Hall case is controlling on the point presented in the case at bar.

THE FEDERAL COURT EXERCISED ITS INDEPENDENT JUDGMENT IN CONSTRUING THE BOND IN THE HALL CASE, AND IS NOT NOW REQUIRED TO ABANDON ITS FORMER OPINION AND FOLLOW THE STATE COURT.

It is a well settled rule of law that the federal courts follow the decisions of the State court in construing a constitution or statute of the state, or decisions of the state court, which have become rules of property.

Jackson vs. Chew ,12 Wheat 153; and the line of decisions following this rule.

There is an equally well settled rule, that as to questions of general and commercial law, and where property

rights have vested before the decisions of the state courts are rendered, that the **federal** courts exercise their independent judgment.

Burgess vs. Seligman, 107 U. S., 20; and the line of cases following it.

In the case of **Hardy vs. Hartman**, the Supreme Court of Mississippi considered the instrument filed, purporting to be the bond required by the statute donating the lands to the Pearl River Improvement and Navigation Company. The construction of the instrument required a consideration of the general and commercial law in the constructions of contractual obligations. The state court held that that instrument was not the bond of the Pearl River Improvement and Navigation Company. When the Circuit Court of Appeals came to consider the same question in the Hall case, it refused to follow the case of **Hardy vs. Hartman**. The Circuit Court of Appeals exercised its independent judgment in passing upon the instrument purporting to be a bond, and in protecting the rights that had accrued prior to the decision of **Hardy vs. Hartman**. The Circuit Court of Appeals held that the patent was a valid and binding instrument, and the title to the lands conveyed on November 20, 1872, by the Pearl River Improvement and Navigation Company to be a good and valid title.

Michigan Central Railroad Co. vs. Myrich, 107 U. S. 102.

The decision of **Southern Pine Company vs. Hall** established a rule of property. The Circuit Court of Appeals in the Hall case reviewed **Hardy vs. Hartman**, and used this language:

"This case, we think, can not be held a judicial construction of the statute on the point here involved. If it should be so considered, although we have great respect for the conclusion of that able and impartial court, we should be required, on the facts of

this case, to exercise an independent judgment in the construction of the statute in question. The appellee in this case having acquired the rights herein asserted before the decision of the Supreme Court of Mississippi just cited, was rendered, she is entitled to invoke the independent judgment of this court as to the proper construction of the statute." Citing *Burgess vs. Seligman*, 107 U. S. 20.

See to the same effect:

Kuhn vs. Fairmount Coal Co., 215 U. S. 349.

THE HALL CASE BECAME A RULE OF PROPERTY.

It is to be observed by reference to the chain of title set out in the opinion in the Hall case and the chain of title pleaded by complainants herein, that the lands embraced in the Hall case and the lands embraced in this case passed from the Pearl River Improvement and Navigation Company to Baldwin by the same deed; and passed from Baldwin to Israel Hall by the same deed; and passed from Israel Hall to Olivia B. Hall by the same last will and testament. Whatever rights Olivia B. Hall had to the lands under consideration by the Circuit Court of Appeals in the Hall case, she had the same right under the same law and facts to the land under consideration in this case. If her title to the lands embraced in litigation in the Hall case was a good title, then her title to the lands embraced in this case was an equally good title. The decision of the Circuit Court of Appeals in the Hall case became a rule of property as to all the lands vested in her by these conveyances.

This court said in *Harris vs. Runnels*, 5 Howard 134:

"Acting under the opinion thus deliberately given by this Court, we can hardly be required by any comity or respect for the state courts to surrender our judgment to de-

cisions since made in the state, and upon full consideration we have pronounced to be valid."

See also:

Pease vs. Peck, 18 Howard 595.

Anderson vs. Santa Anna, 116 U. S. 356.

Carroll County vs. Smith, 111 U. S. 556.

Loeb vs. Trustees, 179 U. S. 449.

It was upon the faith and credit of the decision of the Circuit Court of Appeals in the Hall case that Olivia B. Hall's title to these lands became and was merchantable and valuable. The complainants in this case purchased the lands upon the faith and credit of that decision. If Olivia B. Hall's title was good because of the vesting of contractual rights in the sale from the Pearl River Improvement and Navigation Company to Baldwin in 1872, then she could pass to subsequent vendees an equally good and valid title. It was the duty of the District Court to uphold the title of complainants held by mesne conveyances from Olivia B. Hall, and supported by the decisions of the Circuit Court of Appeals in the Hall case. The District Court, however, refused to follow the Hall case, and chose instead to follow Hardy vs. Hartman. The Circuit Court of Appeals took the same view of the case as did the District Court, and affirmed the decree. The decision of the District Court, as affirmed by the Circuit Court of Appeals, has changed a rule of property, under which complainants acquired their title.

The petition for writ of certiorari should be granted and the case ordered certified to this Court for review, and the judgment of the Circuit Court of Appeals and of the District Court should be reversed, and the case remanded to be tried in accordance with the principles of law applicable to the facts in said cause.

Respectfully submitted:

T. J. WILLS,

Atty. for Petitioners.

APPENDIX "A"

**IN THE UNITED STATES CIRCUIT COURT OF
APPEALS, FIFTH CIRCUIT**

No. 4181

Edward Hines Yellow Pine Trustees, Appellants

versus

Anna F. C. Martin, Et Als., Appellees

Appeal from the District Court of the United States for
the Southern District of Mississippi

T. J. WILLS and DAVIS & WALLACE, for Appellants.
F. C. HATHORN, (Hathorn & Williams on the brief)
for Appellees.

Before WALKER and BRYAN, Circuit Judges, and CALL
District Judge. CALL, District Judge:

The appellants as complainants below filed four bills separately on the chancery side of the Court against the individual defendants, describing pieces of property as follows: Anna F. C. Martin, the NE $\frac{1}{4}$ of SE $\frac{1}{4}$; F. C. Martin SE $\frac{1}{4}$ of SE $\frac{1}{4}$ H. P. Lewis, SW $\frac{1}{4}$ of NW $\frac{1}{4}$; and George Lawrence, SE $\frac{1}{4}$ of NW $\frac{1}{4}$, all in Section 36, Twp. 2, South of Range 15 West; praying in each bill to have the Court decree title in them and remove any claim of the defendant as a cloud upon their title. Each defendant answered the bill denying complainants' title on various grounds and alleging title in himself or herself.

These suits were subsequently consolidated and tried before the District Judge as one suit, upon the agreed statement of facts and documentary evidence,

and a decree rendered whereby it was adjudged that the title to the lands was vested in the defendant and the prayers of the bills denied.

The agreed statement of facts among other things stipulated that the lands in question were acquired by the State of Mississippi from the United States by Act of Congress approved September 28th, 1850; that whatever title complainants have depends upon the patent issued to the Pearl River Improvement and Navigation Company, by the State of Mississippi, June 27th, 1871, and vested in the complainants by mesne conveyances, the production of which is waived; that complainants acquired their title January 1st, 1918; that whatever title defendants have was acquired through the patent issued by the State of Mississippi, December 7th, 1883, to Mose Mitchell, through mesne conveyances, the production of which is waived.

That the taxes on the land were paid by the predecessors in title of the defendants for the years 1892, 1903 and 1905; that the complainants or their predecessors in title paid the taxes for the remaining years from 1890 to 1922 inclusive, and that the parties do not know who paid such taxes prior to 1890.

It is further admitted that the patent to the Pearl River Improvement and Navigation Company, under which complainants claim is the same patent involved in the cases of Southern Pine Company vs. Hall, 105 Fed 84, and Becker vs. Columbia Bank, 73 So. 798, but these particular lands were not involved in those suits; that there was a bond filed in the office of the Secretary of State purporting to be the bond required by the Act of April 8, 1871, of the legislature of the State of Mississippi, which bond is set out in words in the cases of Hardy vs. Hartman 65, Miss. 505; Southern Pine Co. vs. Hall, and Becker vs. Columbia Bank, SUPRA.

Pursuant to this agreed statement of facts, a copy of the patent to the Pearl River Improvement and Navigation Company and a copy of the patent to Mose Mitchell were introduced and filed in evidence.

The District Judge in the trial and disposition of the cases followed the decisions of the Supreme Court of Mississippi in the construction of the Act of the Mississippi Legislature of 1871, rather than the decision of the Circuit Court of Appeals in the case of Southern Pine vs. Hall SUPRA.

In the case of Hardy vs. Hartman, 65 Miss., 505, the Supreme Court of Mississippi in 1888 decided that the giving the bond required by Section 5 of the Act of 1871 incorporating the Pearl River Improvement and Navigation Company, was a condition precedent to the issuance of the patent provided for in said Act; that this condition precedent had not been complied with before the patent, the basis of complainants' title, was issued to the Company and therefore such patent was void and did not divest the title of the State.

The bond referred to in the agreed statement of facts is set out in the statement of the above case, and is as follows:

BOND

"Pearl River Improvement and Navigation Company.

"Know all men by these presents, that we, Walter P. Billings, Samuel A. Vose, A. Warner O. C. French, are held and firmly bound unto the State of Mississippi in the sum of fifty thousand dollars, the payment of which well and truly to be made, we bind ourselves, our heirs and executors, jointly and severally, by these presents. The condition of the above bond is such, that whereas by an act of the Legislature of the State of Mississippi, entitled, 'An Act to incorporate the Pearl River Improvement and Navigation Company, and for other purposes,' a company

was incorporated called the Pearl River Improvement and Navigation Company, which company is charged with certain duties and bound by certain conditions in said Act specified. Now, if said company will well and truly perform, or cause to be performed, all the acts and things mentioned in said act of incorporation, and comply with all the terms and conditions in accordance with the tenor and meaning of said act, then this bond to be void, otherwise to remain in full force and effect.

"In witness whereof said persons have hereunto set their hands and seals this 7th day of April, 1871.

W. P. Billings (Seal)
(by S. A. Vose, his Attorney
S. A. Vose (Seal)
A. Warner (Seal)
O C. French (Seal)

'Approved May 12th, 1871.

J. L. Alcorn, Governor."

The question of the validity of the patent to the Pearl River Improvement and Navigation Company, was again before that Court in *Becker vs. Columbia Bank*, 73 So. 798, when the Court again held the patent void and declared the former decision to be a rule of property in the State. Since the decision of this case, two other cases have been before the Supreme Court of Mississippi. In these cases the Court reversed the case awarding damages to the State and affirmed the Chancery decree dismissing the bill. On suggestion of error seeking to have the Court declare that the distinction drawn in that opinion between that case and *Tynes vs. Southern Pine Company*, unsound. they say "We are not concerned here with the correctness of the decision in *Hardy vs. Hartman* and the rule there applied, whether correct or not to titles derived through the patent issued to the Pearl River Improvement and Navigation Company, has become a rule of property and will not be departed from."

In the case of *Southern Pine Co. vs. Hall*, 105 Fed. 84, the Circuit Court of Appeals reached the conclusion that the bond was a compliance with the statute and the patent issued to the Pearl River Improvement and Navigation Company was valid. The Supreme Court of the United States refused a certiorari in this case.

We have therefore the question whether the rule of title to real property as decided by the Supreme Court of the State of Mississippi should be applied in this case as was done by the District Judge. We think that is the proper rule, and that there is no error in the decree. There cannot be two contradictory rules of title to real property dependent upon the statutes of a state. The construction of such statutes by the highest Court of the State is binding upon the Courts of the United States in cases not falling within some narrow exception. This rule of property has existed in the State of Mississippi since 1888, and being such it will be applied by this Court in deciding cases arising under the statute.

As said by the Supreme Court in the case of *Jackson ex dem St. John vs. Chew*, 12 Wheat. 161, "The inquiry is very much narrowed, by applying the rule which has uniformly governed this court, that where any principle of law, establishing a rule of real property, has been settled in the state courts, the same rule will be applied by this court, that would be applied by the state tribunals. This is a principle so obviously just, and so indispensably necessary, under our system of government, that it cannot be lost sight of."

The same rule was applied in the case of *James H. Suydam vs. Wm. H. Williamson*, 24 Howard 427, and recognized by many decisions of the Supreme Court following.

The decree of the District Court is

Affirmed.

AN ACT TO INCORPORATE THE PEARL RIVER
IMPROVEMENT AND NAVIGATION COMPANY, AND
FOR OTHER PURPOSES

Section 1. Be it enacted by the Legislature of the State of Mississippi, That S. N. Clapp, John McLaurin, Roderick Seal, C. A. Chaplin, Samuel Benjamin, S. A. Vose, B. R. Pierce, H. Sanders, Wm. Beck, I. B. Campbell, B. Clay, J. G. Hanton, H. P. Billings, M. O. Huff, A. V. Miller, Richard Love, C. J. Jones, E. Stafford, F. P. Hilliard, A. Steele, H. S. Gove, Thomas Carnes, James Moore, John Diamond, T. D. Harriss, Peter Hopkins, J. T. Smith, G. W. Walton, J. J. Diller, Edward Hill, H. L. Williams, E. M. Stephens, and their successors, associates, and assigns, be and the same are, created a body corporate and politic, by the name and style of the "Pearl River Improvement and Navigation Company", and by that name may sue and be sued, plead and be impleaded, and defend and be defended against in any court of law or equity in this State; may have and use a common seal, may change and break the same at pleasure, may have and hold real estate, which may be acquired by gift, grant or purchase and may purchase, lease, sell, mortgage, grant alien and convey the same, together with personal property, with the same privilege as a private individual.

Section 2. Be it further enacted, That the capital stock of said company shall be three hundred thousand dollars to be divided into shares of one hundred dollars each. Each share of stock shall entitle the holder to one vote at any meeting of said stockholders; and as soon as seventy-five thousand dollars of said stock shall have been subscribed, and twenty-five thousand dollars paid in, the stockholders shall hold a meeting for the election of five directors, whose term of office shall continue until the first Monday of January, 1872, and until their successors are duly elected and qualified. A majority of said direc-

tors shall constitute a quorum for the transaction of any business appertaining to said company. They shall also proceed to elect out of their number such officers as may be fixed by its by-laws. Said board of directors are hereby vested with full power and authority to make such rules regulations and by-laws, to carry out the provisions of this act, not in violation of the laws of this State or of the United States, as they may deem best for the interest of the company. A majority of the corporators herein named may call a meeting for the purpose of opening books for subscription to the capital stock of said company, and notice of said meeting shall be published in the Weekly Mississippi Pilot

Section 3. Be it further enacted, That said company hereby incorporated shall be required to remove such obstructions as shall be necessary to render the stream navigable for ordinary steam craft; deepen and widen the channel of Pearl River and its tributaries; to slackwater by damming or dredging the same, and to make said stream suitable and fit for the purpose of navigation by steamboats and other watercraft from the mouth of said river to the city of Jackson, and so much higher up as may be deemed advisable, said company may establish harbors, build steamboats and other watercraft; navigate said river; build saw mills, grist mills, warehouses, tenement houses, storehouses, cotton gins, and such other buildings, factories and improvements as they, from time to time, deem advisable and advantageous to said company, and shall have power to operate and use the same for manufacturing purposes.

Section 4. Be it further enacted, That said company shall have full power and authority to carry out the provisions contemplated in the Act of March 12th, 1852, entitled "An Act to Provide for the Appropriation of the Swamp and Overflowed Lands on the Pearl River to the Commissioners of said River, Hereinafter to be Appointed for the Drainage of said Swamp Lands, and for other pur.

poses", and amendments thereto, and for that purpose, shall be, and are hereby declared to be legal and lawful successors of the Board of Commissioners appointed in pursuance of said Act of March 12, 1852, and amendments thereto, and as such successors, said company is hereby vested with the full power, and authority of said commissioners is hereby vested with the full power, and authority of said commissioners, and are hereby vested with all the rights, properties, claims and demands, real, personal and mixed, belonging to said board or under their control.

Section 5. Be it further enacted, That said company shall expend in the improvement of said river and in the navigation thereof, ten per centum the first year, of the value of the property referred to in the preceding section, and that the whole value of said property shall be expended for the purpose specified in this charter, within five years from the passage of this Act. That said company shall, within sixty days after the passage of this Act, file in the office of Secretary of State a bond in the sum of fifty thousand dollars, with two or more good securities, who shall make oath that they are worth the penalty of the bond over and above all liabilities and exemptions which securities shall reside in this State, to be approved by the Governor, and upon the approval and filing of said bond, said Secretary of State shall, from time to time as demanded by said company, make out a patent or patents which shall be signed by the Governor and countersigned by the Secretary of State, which patents shall vest the fee simple of said lands in this company; Provided, nothing in this section shall be construed as to require patents to be sued for any land heretofore sold to legal purchasers; Provided further, That no lands shall be disposed of or sold by said company for less sum than twenty-five cents per acre.

Section 6. Be it further enacted, That said company shall have the power and authority to issue bonds or promissory notes not exceeding two hundred and fifty

thousand dollars, payable within or without the State, and to secure the payment of which they may pledge or mortgage all or any or every part of the property of any kind belonging to said company; and the said board of directors may have full power and authority to sell or dispose of said lands, or any other property belonging to said company, at such rates of premium and discount and upon such terms as in the opinion of the board shall best promote the interest of said company

Section 7. Be it further enacted, That the stockholders of said company shall only be liable on the debts and contracts of said company to the amount of stock or shares respectively owned by them, that is to say, no stockholder shall be in any manner liable for more than the amount of stock owned by him.

Section 8. Be it further enacted, That the Governor may, at any time, require the president of said company to make a report to him of the amount of money expended in the improvement of Pearl River, which report shall be made under oath, and shall set forth all particulars relating to said improvement; and when it becomes apparent to the Governor, that said company has not complied with the conditions of said Act, and that they are not appropriating money derived from the sale of the land as hereinbefore provided, it shall become his duty to commence suit on the bond of said company in his own name, for the use of said Pearl River District.

Section 9. Be it further enacted, That the Governor may require a new bond, or additional security, to be given whenever the old bond or security becomes insufficient.

Section 10. Be it further enacted, That all Acts or parts of Acts in conflict with the provisions of this Act be, and the same are hereby repealed.

Section 11. Be it further enacted, that this Act take effect and be in force from and after its passage.

Passed the house of representatives March 22, 1871.

H. W. WARREN,
Speaker of the House of Representatives.

Passed the Senate March 27th, 1871.

R. C. POWERS,
President of the Senate.

STATE OF MISSISSIPPI

OFFICE OF SECRETARY OF STATE

Jackson, Mississippi.

I, James Lynch, Secretary of the State of Mississippi, do hereby certify that the above and foregoing Act entitled "An Act to incorporate the Pearl River Improvement and Navigation Company, and for other purposes", was duly passed by both houses of the Legislature, at the dates above specified, by the respective presiding officers thereof, and remained in the hands of the Governor, and was not returned by him within five days (Sundays excepted) after it was presented to him, and that in the meantime no adjournment of said legislature occurred to prevent its return, whereby said Act became a law of said State by operation of the Constitution thereof.

Given under my hand and the Great Seal of the State
(L.S.) of Mississippi, hereunto affixed this 8th
day of April, A.D., 1871.

JAMES LYNCH,
Secretary of State.

APPENDIX "C"

CHAPTER CXIV. OF THE LAWS OF MISSISSIPPI AN ACT TO AUTHORIZE THE STATE TREASURER TO RECEIVE AND RECEIPT FOR CERTAIN MONEYS, AND FOR OTHER PURPOSES

WHEREAS, The Legislature of the State of Mississippi passed an Act incorporating the Pearl River Improvement and Navigation Company, under the provisions of which Act certain lands inured to said company, and have been patented to said company, in compliance with the Act of incorporation; and,

WHEREAS(The object and purpose of said Act was the improvement of Pearl River, which improvements are impracticable for the reason that said Act is too vague and indefinite to permit said improvements as contemplated by the spirit of the same; and,

WHEREAS, Heretofore said lands have not been subject to taxation, and by the sale to said company the same have become taxable, and the taxes thereon paid, thus contributing to the public revenue; therefore,

SECTION 1. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That the Pearl River Improvement and Navigation Company, through its officers, agents and attorneys, be authorized and required to pay into the State Treasury on or before the first day of October, 1873, twenty-five cents per acre for the land which has been patented to said company, and upon payment of said twenty-five cents per acre for the lands so patented to said company, the State Treasurer shall issue to persons so paying the same a receipt and if said receipt and payment be for an amount equal to the aggregate value of said land for which said company holds the legal and equitable title, at the rate of twenty-five cents per acre for the lands so held, and up on presentation of said receipt to the Secretary of State, he shall cancel and deliver up the bond on file in his office to secure a compliance of the provisions of the Act of incorporation.

SECTION 2. BE IT FURTHER ENACTED, That in all cases where any person or persons have purchased from the Board of Swamp Land Commissioners of Pearl River District or its lawfully authorized agent, any lands for which patents have been issued to said company, and have paid for the said in good faith, and received certificates of purchase or receipts therefor, but have failed to present said certificate to the Secretary of State for the purpose of obtaining patents for said lands, the said Pearl River Improvement and Navigation Company is hereby required, on satisfactory proof of said purchase being made, to execute to such person his, her, or their heirs or assigns, as the case may be, holding such certificates or receipts, a quit claim deed to said lands, relinquishing all right, title, interest, and claim to said lands; Provided, That said persons holding such certificates shall make the execution to said company, or its authorized agent, for the execution of said deed within the space of six months from the date of the passage of this Act, and in case such persons holding certificates as aforesaid to said lands so patented to said company, shall not make application for said deed of quit claim by said company within the Six months fixed by this Act, the title of the said company to all the lands patented to them shall become absolute and indefeasible in law and equity, and all persons claiming under certificates of purchase issued in good faith, who shall not make application for a quit claim deed as above provided, shall, after the lapse of the six months aforesaid, be forever barred, estopped from setting up title to any of the lands so patented to said company; **Provided**, That as to all lands about which there is no controversy of title, the said Pearl River Improvement and Navigation Company shall be entitled to receive patents instantly upon the payment thereof of the said sum of twenty-five cents per acre; **And provided further**, That in the final settlement with the Treasurer, the said company shall receive a credit of twenty-five cents per acre for each and every acre of land which they may release under the provision of this Act.

SECTION 3. BE IT FURTHER ENACTED, That the application for deed of quit claims under this Act shall be supported by affidavit of the person making the same, setting forth the numbers of the lands purchased, and that the full price fixed by the law has been paid to the Treasurer of the Board of Swamp Land Commissioners therefor, which said affidavit with the certificate of purchase shall be filed in the office of the Clerk of the Chancery Court of the several counties aforesaid within the space of six months from the date of the passage of this Act. The Clerk of the Court aforesaid shall thereupon forward certified copies of said certificates of purchase with the affidavits aforesaid, whereupon the Pearl River Improvement and Navigation Company shall execute the deeds of quit claim provided for in this Act, which shall be forwarded by the Secretary of State to the clerks aforesaid for delivery to the parties interested.

SECTION 4. BE IT FURTHER ENACTED, That if said payments as referred to in the first section of this Act are not made on or before the said first day of October, 1873, then all rights, title, interest and claim of said company, in and to said land shall revert to the State, and shall by the provisions of this Act, rest absolute in the State.

SECTION 5. BE IT FURTHER ENACTED, That in order to secure the carrying out of the provisions of this Act, said company, through its officers, shall, upon the approval of this Act, deposit with the Secretary of State all the patents for said lands which have been made by the State; said patents to be delivered to the company only upon a strict compliance with this Act.

SECTION 6. BE IT FURTHER ENACTED, That all Acts and parts of Acts, and all acts, deeds, and proceedings, whatever of the Pearl River Improvement and Navigation Company, be, and the same are hereby legalized, ratified and confirmed; this Act to take effect and be in force from and after its passage.

APPROVED, April 19, 1873.

IN THE SUPREME COURT OF THE UNITED STATES
OF AMERICA

In the matter of the petition of the Edward Hines Yellow Pine Trustees vs. Anna F. C. Martin et als., and now come the petitioners herein, the Edward Hine Yellow Pine Trustees, and move the court upon a certified copy of the transcript of the record herein, and upon the annexed petition duly sworn to, for writ of certiorari directed to the United States Circuit Court of Appeals for the Fifth Circuit to bring before this Honorable Court the case of THE EDWARD HINES YELLOW PINE TRUSTEES VS. ANNA F. C. MARTIN ET ALS., recently decided by the United States Circuit Court of Appeals, for such proceedings therein as to this court may seem just, and for such other and further relief as the court may deem the petitioners entitled.

T. J. WILLS,

Attorney for Petitioners.

IN THE SUPREME COURT OF THE UNITED STATES
OF AMERICA

In the matter of the petition of the Edward Hines Yellow Pine Trustees for a writ of certiorari directed to the United States Circuit Court of Appeals for the Fifth Circuit to bring before the Supreme Court of the United States the case of the Edward Hines Yellow Pine Trustees Anna F. C. Martin et als:

Sirs: Please take notice that upon a certified copy of the transcript of the record herein, and upon the annexed petition and the brief accompanying it by or on behalf of the petitioners herein, and duly sworn to, I shall move the motion hereto annexed in the Supreme Court of the United States at the Capitol in the city of Washington,

District of Columbia, on Monday, the 5th day of May, 1924, at the opening of the court on that day, or as soon thereafter as counsel can be heard, and I shall then and there move the court for further relief in the premises as may be just.

Witness my hand this the 7th day of April, 1924.

T. J. WILLS,
Attorney for Petitioners.

To Hathorn & Williams, Esqs.,
Poplarville, Mississippi
Attorneys for Anna F. C. Martin, et als.

IN THE SUPREME COURT OF THE UNITED STATES
OF AMERICA

EDWARD HINES YELLOW PINE TRUSTEES,

Petitioners vs.

ANNA F. C. MARTIN ET ALS., Respondents

We acknowledge receipt of copies of the above and foregoing petition and brief, motion, and notice, all of which this day have been delivered to us this the 7th day of April, 1924.

HATHORN & WILLIAMS,
Attorneys for Respondent.

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Office Supreme Court, U. S.
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WM. B. STANBURY

No. 363

**IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA**

EDWARD HINES YELLOW PINE TRUSTEES,

Petitioners,

vs.

ANNA F. C. MARTIN ET ALS., Respondents,

BRIEF OF PETITIONERS

**T. W. DAVIS, Purvis, Mississippi
T. J. WILLS, Hattiesburg, Mississippi
Attorneys for Petitioners.**

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**IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA**

EDWARD HINES YELLOW PINE TRUSTEES,

Petitioners,

vs.

ANNA F. C. MARTIN ET ALS., Respondents,

BRIEF OF PETITIONERS

STATEMENT OF THE PLEADINGS

MAY IT PLEASE THE COURT:

On the 12th day of October, 1922, the petitioners filed their bills of complaint in the District Court of the United Staes, praying for the cancellation of outstanding deeds and record evidences of title as clouds upon their title and praying that they be decreed the sole and only, true, legal equitable owners of

the land therein described. The bills of complaint alleged that petitioners' title came from the United States government under Act of September 28, 1850, known as the Swamp and Overflowed Land Act to the State of Mississippi, and patent from the State of Mississippi dated June 27, 1871, to the Pearl River Improvement and Navigation Comany, and by mesne conveyance therefrom to petitioners. The bills further alleged that the State of Mississippi issued a junior patent on December 7, 1883, to Mose Mitchell, and that thereafter Mose Mitchell executed a deed purporting to convey said lands, and by instrument subsequently executed, the pretended title of Mose Mitchell passed to respondents. It was to cancel this junior patent and the conveyances thereunder that the bills in equity were filed in the District Court.

Petitioners in their bills deraigned their title from the United States to the State of Mississippi by Act of September 28, 1850; from the State of Mississippi to the Pearl River Improvement and Navigation Company by patent dated June 27, 1871, authorized by Act of the Legislature of April 7, 1871; that the Pearl River Improvement and Navigation Company, on November 20, 1872, for a valuable consideration conveyed the said lands to M. S. Baldwin; that on the 17th day of April, 1873, M. S. Baldwin conveyed to Israel Hall; that on April 30, 1889, Israel Hall died, leaving a last will and testament, in which he devised the said lands to his wife, Olivia B. Hall. That on the 23rd of July, 1900, Olivia B. Hall conveyed the said lands to Charlotte H. Eastman; that on July 5, 1905, Charlotte H. Eastman conveyed to the Wyatt Lumber Company; that on January 1, 1918, the Wyatt Lumber Company conveyed to the complainants in the court below.

There were four original bills filed in the District Court against four separate defendants for the different lands described in the said bills of complaint. The chain of title to complainants as to each separate tract of land was the same, and the chain of title through which the

defendant claimed, was identical down to the deed under which each separate defendant held, the grantor in each deed to the defendants being the same.

The defendants filed their separate answers, in which they denied that the complinants were the owners of the said land, and set up title in themselves.

When the causes came on for a hearing, the four cases were consolidated and tried on an agreed statement of facts. The District Court denied the relief prayed for, and decreed that the defendants were the owners of the lands. The District Court based its decree on the authority of the decisions of the Supreme Court of the State of Mississippi, overruling the decisions of the Circuit Court of Appeals, which had formerly adjudicated the validity of the said Pearl River Improvement and Navigation Company's patent.

STATEMENT OF FACTS

The case was tried on an agreed statement of facts. The material facts agreed on are these: First, That the complainants derived their title by mesne conveyances from the Pearl River Improvement and Navigation Company, and whatever title that company had under and by virtue of its patent passed to and was held by complainants. It was further agreed that the introduction of evidence by the complainants of the chain of title from the Pearl River Improvement and Navigation Company to complainants was waived. It was further agreed that the patent to the Pearl River Improvement and Navigation Co., is the same patent, which was involved in the case of Southern Pine Company vs. Hall, reported in 105 **Federal Reporter**, P. 84, and the case of Becker vs. Columbia Bank, 73 **Southern Reporter**, P. 798, but that the lands embraced in the four suits were not involved in either of said suits. The patent from the State to the

Pearl River Improvement and Navigation Company was introduced by agreement.

By the agreement it is admitted that patent under consideration is the same patent considered in Southern Pine Company vs. Hall. The deraignment of title shows that the Pearl River Improvement and Navigation Company parted with the title to this land for a valuable consideration on November 20, 1872. It will further appear by reference to the Hall case, *supra*, and the deraignment of title, that Olivia B. Hall owned the land at the time the Hall case was decided by the Circuit Court of Appeals. The bill of complaint charges that she owned it, and that it was by inadvertence that the lands were omitted from the bill of complaint in that suit.

The Circuit Court of Appeals thus stated the facts of the case, upon which they based their opinion:

"The appellants as complainants below filed four bills separately on the chancery side of the Court against the individual defendants, describing pieces of property as follows: Anna F. C. Martin, the NE $\frac{1}{4}$ of SE $\frac{1}{4}$; F. C. Martin, SE $\frac{1}{4}$ of SE $\frac{1}{4}$; H. P. Lewis, SW $\frac{1}{4}$ of NW $\frac{1}{4}$; and George Lawrence SE $\frac{1}{4}$ of NW $\frac{1}{4}$; all in Section 36, Twp. 2, South, of Range 15 West; praying in each bill to have the Court decree title in them and remove any claim of the defendants as a cloud upon their title. Each defendant answered the bill denying complainants' title on various grounds and alleging title in himself or herself.

"These suits were subsequently consolidated and tried before the District Judge as one suit, upon the agreed statement of facts and documentary evidence, and a decree rendered whereby it was adjudged that the

title to the lands was vested in the defendants and the prayers of the bills denied.

"The agreed statement of facts among ~~other things stipulated that the lands in question~~ were acquired by the State of Mississippi from the United States by Act of Congress approved September 28th 1850; that whatever title complainants have depends upon the patent issued to the Pearl River Improvement and Navigation Company, by the State of Mississippi, June 27th, 1871, and vested in the complainants by mesne conveyances, the production of which is waived; that complainants acquired their title January 1st, 1918; that whatever title defendants have was acquired through the patent issued by the State of Mississippi, December 7th, 1883, to Mose Mitchell, through mesne conveyances, the production of which is waived.

"That the taxes on the land were paid by the predecessors in title of the defendants for the years 1892, 1903 and 1905; that complainants or their predecessors in title paid the taxes for the remaining years from 1890 to 1922 inclusive, and that the parties do not know who paid such taxes prior to 1890.

"It is further admitted that the patent to the Pearl River Improvement and Navigation Company, under which complainants claim is the same patent involved in the cases of Southern Pine Co., vs. Hall, 105 Fed. 84, and Becker vs. Columbia Bank, 73 So. 798, but these particular lands were not involved in these suits; that there was a bond filed in the office of the Secretary of State purporting to be the bond required by the Act of April 8th, 1871 of the Legislature of the State of

Mississippi, which bond is set out in words in the cases of Hardy vs. Hartman, 65 Miss. 505; Southern Pine Co. vs. Hall, and Becker vs. Columbia Bank, *supra*.

"Pursuant to this agreed statement of facts, a copy of the patent to the Pearl River Improvement and Navigation Company and a copy of the patent to Mose Mitchell were introduced and filed in evidence.

"The District Judge in the trial and disposition of the cases followed the decisions of the Supreme Court of Mississippi in the construction of the Act of the Mississippi Legislature of 1871, rather than the decision of the Circuit Court of Appeals in Southern Pine Co. vs. Hall, *supra*.

"In the case of Hardy vs. Hartman 65 Miss. 505, the Supreme Court of Mississippi in 1888 decided that the giving the bond required by Section 5 of the Act of 1871 incorporating the Pearl River Improvement and Navigation Company, was a condition precedent to the issuance of the patent provided for in said Act; that this condition precedent had not been complied with before the patent, the basis of complainants' title, was issued to the company and therefore such patent was void and did not divest the title of the State.

"The bond referred to in the agreed statement of facts is set out in the statement of the above case, and is as follows:

BOND.

Pearl River Improvement and Navigation Company.

"Know all men by these presents, that we, Walter P. Billings, Samuel A. Vose, A. Warner, O. C. French, are held and firmly bound unto the State of Mississippi in the sum of Fifty Thousand Dollars, the payment of which well and truly to be made, we bind ourselves, our heirs and executors, jointly and severally, by these presents. The condition of the above bond is such, that whereas by an Act of the Legislature of the State of Mississippi, entitled, 'An Act to incorporate the Pearl River Improvement and Navigation Company, and for other purposes,' a company was incorporated called the Pearl River Improvement and Navigation Company, which company is charged with certain duties and bound by certain conditions in said Act specified. Now, if said company will well and truly perform, or cause to be performed, all the acts and things mentioned in said act of incorporation, and comply with all the terms and conditions in accordance with the tenor and meaning of said act, then this bond to be void, otherwise to remain in full force and effect.

"In witness whereof said persons have hereunto set their hands and seals this 7th day of April, 1871.

"W. P. Billings (Seal)
(by S. A. Vose, His attorney)
S. A. Vose, (Seal)
A. Warner (Seal)
O. C. French (Seal)
"Approved May 12th, 1871.
J. L. ALCORN, Governor."

"The question of the validity of the patent to the Pearl River Improvement and Navi-

gation Company, was again before that Court in *Becker vs. Columbia Bank*, 73 So. 798, when the Court again held the patent void and declared the former decision to be a rule of property in the State. Since the decision of this case, two other cases have been before the Supreme Court of Mississippi. In these cases the Court reversed the case awarding damages to the State and affirmed the chancery decree dismissing the bill. On suggestion of error seeking to have the Court declare that the distinction drawn in that opinion between that case and *Tynes vs. Southern Pine Company*, unsound, they say: 'We are not concerned here with the correctness of the decision in *Hardy vs. Hartman* and the rule there applied, whether correct or not to titles derived through the patent issued to the Pearl River Improvement and Navigation Company, has become a rule of property and will not be departed from.'

"In the case of *Southern Pine Co. vs. Hall* 105 Fed. 84, the Circuit Court of Appeals reached the conclusion that the bond was a compliance with the statute and the patent issued to the Pearl River Improvement and Navigation Company was valid. The Supreme Court of the United States refused a certiorari in this case.

"We have therefore the question whether the rule of title to real property as decided by the Supreme Court of the State of Mississippi should be applied in this case as was done by the District Judge. We think that is the proper rule, and that there is no error in the decree. There cannot be two contradictory rules of titles to real property dependent upon the statutes of a state. The

construction of such statutes by the highest Court of the State is binding upon the courts of the United States in cases not falling within some narrow exceptions."

The Circuit Court of Appeals refused to follow its own decision in the case of Southern Pine Company vs. Hall. It overruled that case and followed Hardy vs. Hartman, 65 Mississippi 505, and Becker vs. the Columbia Bank, *supra*. The Circuit Court of Appeals affirmed the decree of the District Court.

ARGUMENT

COMPLAINANTS' TITLE IS A GOOD AND VALID TITLE. HARDY VS. HARTMAN AND BECKER VS. COLUMBIA BANK ARE NOT APPLICABLE TO THE CASE AT BAR.

The State of Mississippi patented the lands involved here to the Pearl River Improvement and Navigation Company under and by virtue of the Act of April 8, 1871. A copy of the said Act is filed as Appendix "B" to the petition and brief for writ of certiorari. The patent issued on June 27, 1871, is regular in form and was duly recorded. On November 20, 1872, the Pearl River Improvement and Navigation Company, for a valuable consideration, sold the lands here in question to Baldwin. Baldwin, on April 17, 1873, for a valuable consideration, sold and conveyed the said lands to Israel Hall. On April 19, 1873, Israel Hall was the owner of the said lands by mesne conveyances from the Pearl River Improvement and Navigation Company.

The Legislature of the State of Mississippi enacted Chapter 114 of the Acts of 1873, which act became a law on April 19, 1873. The State by this act legalized, ratified and confirmed the deeds previously made by the Pearl River Improvement and Navigation Company to land which had passed to it under the Acts of April 8, 1871. A

copy of Chapter 114 of the Laws of 1873 is exhibited as Appendix "C" to the petition and brief for the writ of certiorari.

Section 1, Chapter 114 of the laws of 1873, provided that the Pearl River Improvement and Navigation Company should pay into the state treasury on or before the first day of October, 1873, twenty-five cents per acre for the land which had been patented to said company. It further provided that upon the payment of twenty-five cents per acre, patent should issue for all the lands embraced in the grant and not previously patented. By Section 4 of the said act, it provided that if said payments, as referred to in the first section, are not made, then all the right, title and interest of the company reverted to the State, and by the provision of the act, should rest absolute in the State. Section 5 provided for the surrender of the patents to the Secretary of the State to be redelivered to the company upon its compliance with the provisions of the act in paying the twenty-five cents per acre.

The Pearl River Improvement and Navigation Company, at the time of the enactment of Chapter 114 of the Laws of 1873, had sold and conveyed part of the lands previously patented to it. The lands embraced in this suit had been sold by said company and deed executed therefor to Baldwin. By Section 6 of the said act, the Legislature protected the purchasers of these lands by legalizing, ratifying and confirming the deeds made by the Pearl River Improvement and Navigation Company.

In *Hardy vs. Hartman*, decided May 31, 1888, Hardy claimed title to the lands there involved under the Act of 1871, granting the lands to the Pearl River Improvement and Navigation Company and a tax sale thereafter in which the said lands were sold to the State of Mississippi and a purchase by him of the said tax title from the State. Hartman's title rested upon a subsequent patent from the State of Mississippi to him.

The lands embraced in the Hartman case were never sold by the Pearl River Improvement and Navigation Company. The legal and logical conclusion to be deduced is that the twenty-five cents per acre was never paid by the Pearl River Improvement and Navigation Company; that the Secretary of the State never redelivered the patents to the said company. The lands were abandoned by the said company, and subsequent thereto were sold for taxes.

Under Chapter 114 of the Acts of 1873, the lands donated to the Pearl River Improvement and Navigation Company by the Act of 1871 were divided into two classes and dealt with as such. The first class of lands dealt with were those lands granted to the Pearl River Improvement and Navigation Company, which had not been alienated by it. The second class were those lands donated by the said Pearl River Improvement and Navigation Company, and which the said company sold and conveyed prior to the passage of said act.

In the Hartman case, the Supreme Court of the State of Mississippi was dealing with those lands coming within the first classification of the act. No patent was shown to have issued to the Pearl River Improvement and Navigation Company, and in the absence of a patent, no title passed under Chapter 114 of the Acts of 1873. It is true that no reference is made to the laws of 1873, in the opinion of the Court in the Hartman case. But the reason for the result can be justified under this law.

In the case of Becker vs. Columbia Bank, *supra*, the title to the land under consideration was identical with that in the Hartman case. Both cases were passing upon those lands, embraced within the grant to the Pearl River Improvement and Navigation Company and never alienated by that company.

The lands involved in this suit came within the second class of lands dealt with in the Acts of 1873. The sale of

the Pearl River Improvement and Navigation Company was specifically ratified and confirmed by Section 6 of the act. Whatever defects or invalidities that might have attached to the original patent were cured by this legislative ratification.

Southern Pine Company vs. Hall, *supra*, was dealing with the lands embraced in the second class and identical in title with the lands here under consideration. The Hall case is the only case in any court that has ever passed upon the title to lands situated and classified as are these lands. The Hall case is controlling on the point presented in the case at bar.

THE FEDERAL COURT EXERCISED ITS INDEPENDENT JUDGMENT IN CONSTRUING THE BOND IN THE HALL CASE, AND IS NOT NOW REQUIRED TO ABANDON ITS FORMER OPINION AND FOLLOW THE STATE COURT.

It is a well settled rule of law that the federal courts follow the decisions of the State court in construing a constitution or statute of the State, or decisions of the State court, which have become rules of property.

Jackson vs. Chew, 12 Wheat 153; and the line of decisions following this rule.

There is an equally well settled rule, that as to questions of general and commercial law, and where property rights have vested before the decisions of the State courts are rendered, that the federal courts exercise their independent judgment.

Burgess vs. Seligman, 107 U. S. 20; and the line of cases following it.

In the case of Hardy vs. Hartman, the Supreme Court of Mississippi considered the instrument filed, pur-

porting to be the bond required by the statute donating the lands to the Pearl River Improvement and Navigation Company. The construction of the instrument required a consideration of the general and commercial law in the construction of contractual obligations. The State Court held that that instrument was not the bond of the Pearl River Improvement and Navigation Company. When the Circuit Court of Appeals came to consider the same question in the Hall case, it refused to follow the case of Hardy vs. Hartman. The Circuit Court of Appeals exercised its independent judgment in passing upon the instrument purporting to be a bond, and in protecting the rights that had accrued prior to the decision of Hardy vs. Hartman. The Circuit Court of Appeals held that the patent was a valid and binding instrument, and the title to the lands conveyed on November 20, 1872, by the Pearl River Improvement and Navigation Company to be a good and valid title.

Mich Cen. R. R. Co. vs. Myrich, 107 U. S. 102.

In Hardy vs. Hartman, there had been an assessment of the lands to the Pearl River Improvement and Navigation Company and a sale thereof for the delinquent taxes due. Subsequent thereto, a second patent to these lands had issued from the State to Hartman. The Supreme Court of the State of Mississippi, in passing on the question presented as to which represented the valid title, said that the Act of 1871 provided that the Pearl River Improvement and Navigation Company should file with the Secretary of the State a bond with security in the sum of \$50,000.00, and that the same should be approved by the Governor. The Court then said that there was a bond in the record, filed in the office of the Secretary of the State and approved by the Governor; but it does not purport to be the bond of the company and can not be regarded as such. The Court then said that the proposition was too plain for argument; that if a patent issued to the land without these conditions being complied with, it was void.

The bond referred to in the Hardy case is the same bond set out in the opinion of the Circuit Court of Appeals in the case at bar. The Mississippi Court was not in any sense construing the statute. The Act of the Legislature of Mississippi creating the Pearl River Improvement and Navigation Company provided for the execution of a bond. An instrument purporting to be a bond was executed, filed and approved, as provided by statute. The question for determination was whether or not the instrument was a bond binding the company created by statute to perform the duties imposed upon it. A judicial construction of the instrument filed involved its interpretation in accordance with the general and commercial laws.

In *Davenport vs. Dodge County*, 105 U. S. 237, this Court said:

"A bond implies an obligor bound to do what it is agreed shall be done."

This fixed a definite rule of interpretation of an instrument under the general and commercial law. When the case of *Southern Pine Company vs. Hall* came before the Circuit Court of Appeals for consideration, that Court was not bound by the opinion in *Hardy vs. Hartman*, for the reason that as to all matters of general and commercial law, the United States courts exercise an independent judgment. In the exercise of that independent judgment, the Circuit Court of Appeals construed the instrument to be a bond in compliance with general and commercial laws. Being a bond, so judicially construed, the condition precedent to the passing of the title to the Pearl River Improvement and Navigation Company was complied with, and the patent became a valid and binding conveyance of the titles to said land.

THE HALL CASE BECAME A RULE OF PROPERTY

The decision of *Southern Pine Company vs. Hall*

established a rule of property. The Circuit Court of Appeals in the Hall case reviewed Hardy vs. Hartman, and used this language:

"This case, we think, can not be held a judicial construction of the statute on the point here involved. If it should be so considered, although we have great respect for the conclusion of that able and impartial court, we should be required, on the facts of this case, to exercise an independent judgment in the construction of the statute in question. The appellee in this case having acquired the rights herein asserted before the decision of the Supreme Court of Mississippi just cited, was rendered, she is entitled to invoke the independent judgment of this court as to the proper construction of the statute." Citing Burgess vs. Seligman, 107 U. S. 20.

See to the same effect:

Kuhn vs. Fairmount Coal Co., 215 U. S. 349.

It is to be observed by reference to the chain of title set out in the opinion in the Hall case and the chain of title pleaded by complainants herein, that the lands embraced in this case passed from the Pearl River Improvement and Navigation Company to Baldwin by the same deed; and passed from Baldwin to Israel Hall by the same deed and passed from Israel Hall to Olivia B. Hall by the same last will and testament. Whatever rights Olivia B. Hall had to the lands under consideration by the Circuit Court of Appeals in the Hall case, she had the same right under the same law and facts to the land under consideration in this case. If her title to the lands embraced in litigation in the Hall case was a good title, then her title to the lands embraced in this case was an equally good title. The decision of the Circuit Court of Appeals

in the Hall case became a rule of property as to all the lands vested in her by these conveyances.

This Court said in *Harris vs. Runnels*, 5 Howard 134:

"Acting under the opinion thus deliberately given by this Court, we can hardly be required by any comity or respect for the state courts to surrender our judgment to decisions since made in the state; and upon full consideration we have pronounced to be valid."

See also:

Pease vs. Peck, 18 Howard 595.

Anderson vs. Santa Anna, 116 U. S. 356.

Carroll County vs. Smith, 111 U. S. 556

Loeb vs. Trustees, 179 U. S. 449.

Since the decision in the Hall case the Supreme Court of the State of Mississippi decided the case of *Becker vs. the Columbia Bank*, 112 Mississippi 819, in which the Court said, that *Hardy vs. Hartman* had become a rule of property and would not be overruled. It further said that the bond required, according to the previous decisions of our Court, was not executed, and later in the case of *Trustees vs. Moore*, 97 Southern 552, in response to suggestion of error, the Court said that it was not concerned about the correctness of the decision in *Hardy vs. Hartman*; that that decision had become a rule of property and would not be departed from.

In deciding this case, the Circuit Court of Appeals said:

"We have, therefore, the question whether the rule of title to real property as decided by the Supreme Court of the State of Mississippi should be applied in this case, as

was done by the District Judge. We think that is the proper rule, and that there is no error in the decree."

The Circuit Court of Appeals based its decision upon *Jackson vs. Chew*, 12 **Wheat** 161, and *Suydam vs. Williamson*, 24 **Howard** 427. In the *Jackson* case the question was up before this Court for the construction of a will under the New York statutes. If the title conveyed by the instrument was defeasible by the devisee's dying without issue, in other words, if he took an estate-tail under the instrument controlled as it was by the New York law then his grantee's title failed upon his death without issue. The question had been settled by repeated decisions in the New York Court and had established a rule of property. This Court held that the rule of property established by the New York Courts under the New York statutes would be followed.

In the *Suydam* case, the question involved was the title under special acts of the New York Legislature. In *Williamson vs. Perry*, 8 **Howard** 495, this court had construed the statute in question. Subsequently the New York Court had placed different construction on the statute, thereby placing the title to the lands in different parties from those given the land in the *Perry* case. The validity of the title resting upon legislative enactment requiring a judicial construction of the acts of the Legislature placed the title solely within the purview of the construction given the act by the New York Court. This Court, in the *Suydam* case, readjusted its holding to conform to the interpretation given the statute of the State of New York by the highest court of that State.

The case at bar presents quite a distinct question from that presented in the *Suydam* case. The Circuit Court of Appeals said, in speaking of the construction of statutes:

"The construction of such statutes by the highest court of the State is binding upon the

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NO. [REDACTED]

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**IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA**

EDWARD HINES YELLOW PINE TRUSTEES,

Petitioners

vs.

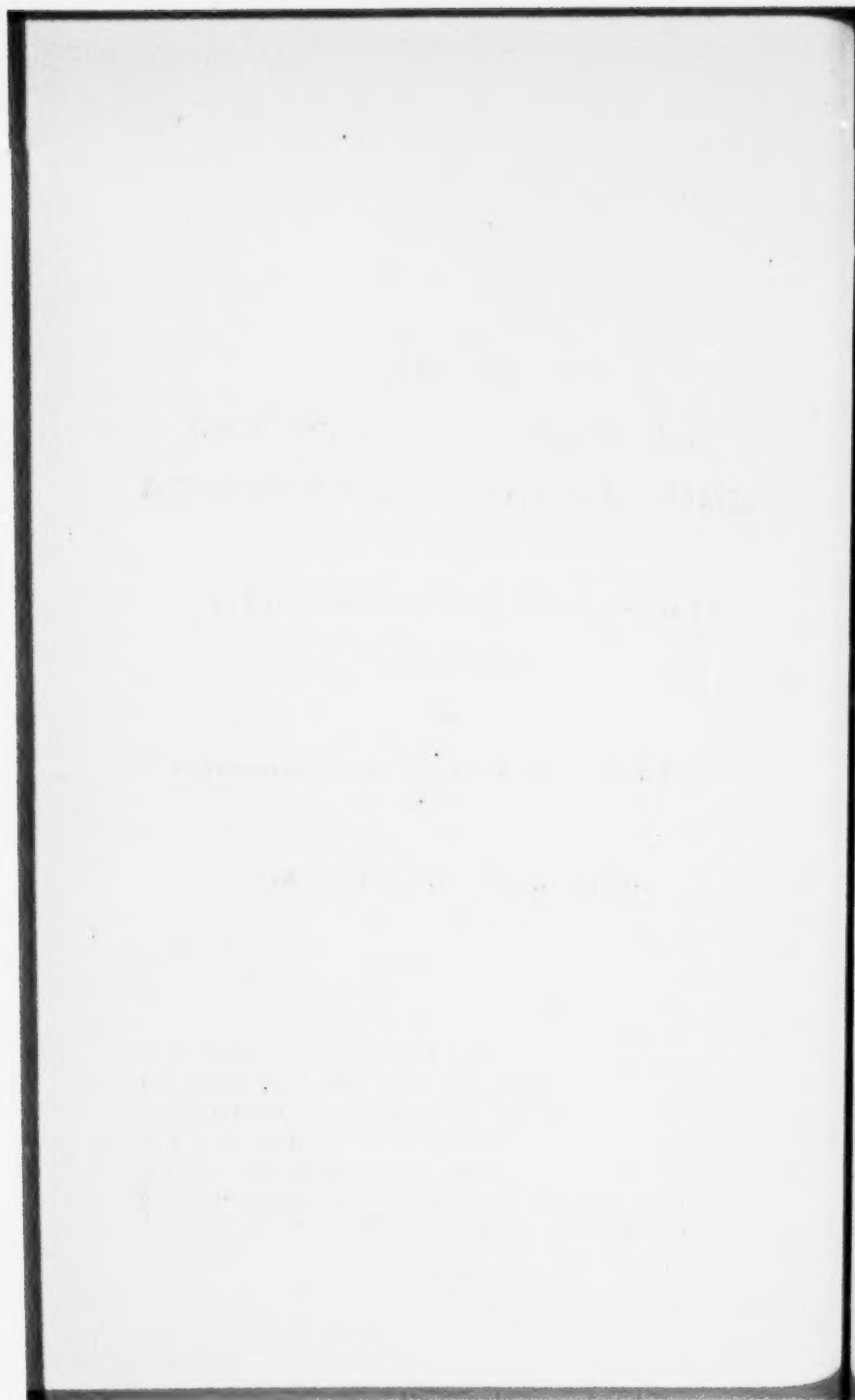
ANNA F. C. MARTIN ET ALS., Respondents

REPLY BRIEF OF PETITIONERS

T. W. DAVIS,

T. J. WILLS,

Attorneys for Petitioners.



NO. 971.7

**IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA**

EDWARD HINES YELLOW PINE TRUSTEES,

Petitioners

vs.

ANNA F. C. MARTIN ET. ALS., Respondents

REPLY BRIEF OF PETITIONERS

MAY IT PLEASE THE COURT:

In the statement of the facts by respondents in their brief they say that there is a wide difference in the statement of the facts by petitioners and the statement of the facts made by the Circuit Court of Appeals in stating the case. We do not think that there is any difference other than that the statement in the petition is fuller and more complete than the statement made by the Cir-

cuit Court of Appeals. The statements in the petition are true and correct statements of the facts as they appear in the record. The record bears out the statements made in the petition, and we think are justified.

The Circuit Court of Appeals refused to yield to the argument that the petitioners herein were entitled to be protected by the rule of property announced by the Circuit Court of Appeals in the case of Southern Pine Company vs. Hall, upon which petitioners relied in purchasing the lands in question. The Circuit Court of Appeals followed the state court in Hardy vs. Hartman, and overruled Southern Pine Company vs. Hall. This action of the Circuit Court of Appeals was taken after it had reviewed Hardy vs. Hartman and specifically refused to follow it in Southern Pine Company vs. Hall. It is to have this court review the decision of the Circuit Court of Appeals and state the law as to how far a rule of property arising under a decision of the United States courts may be relied on by subsequent purchasers, that this petition is presented.

RESPONSE TO POINT I

Point 1 urged by respondents in their brief is that the petition does not show any grounds justifying the issuance of the writ. The Circuit Court of Appeals in Southern Pine Company vs. Hall passed upon two points:

First, That the instrument in question was a bond and a bond conditioned for the performance of the obligations of the Pearl River Improvement & Navigation Company. This conclusion having been reached, the Court held that the patent was a valid and binding patent. The decision established the validity of the title resting on this patent as its source.

Second, that rights having vested under that patent by purchase prior to the decision of the Supreme Court of Mississippi, its rights would be protected in the United State Court.

This decision in the Hall case established a rule of property in the United States courts as to the patent under consideration by the first point decided. It also established the validity of the title held by Olivia B. Hall which had vested prior to the decision in the State court in Hardy vs. Hartman, by the second point decided.

It is a matter of peculiar gravity and general importance to the public to know whether or not the opinion of the United States courts, which fixes a rule of property, will be adhered to by the United States court, or whether at a subsequent presentation thereof, it will be receded from and the owners of property acquired under the authority of the decisions be deprived of their property by the change. We know of no question that could be of greater importance to the bar and to the laity of this government than to know just how far the decisions of the United States court and the rules of property fixed thereby may be relied upon.

RESPONSE TO POINT II

Respondents say in Point 2 of their brief that the application for a writ of certiorari is made too late. The Circuit Court of Appeals denied the petition for a rehearing on the 20th day of February, 1924. Reference to the certified record filed as a part of the petition in the case will show that this is true. The court said:

"The rule is that if a motion or a petition for rehearing is made, or presented in season, and entertained by the court, the time

limit for a writ of error or appeal does not begin to run until the motion or petition is disposed of."

Aspen Mining & Smelting Co. vs. Billings, 150 U. S. 36.

The petition for rehearing was overruled on February 20, 1924. The three months allowed by the Judicial Code in which to apply for a writ of certiorari would not expire until May 20th. The petition and application was timely filed.

RESPONSE TO POINT III

Respondents in Point 3 contend that the decision of the Circuit Court of Appeals is correct, and for that reason should not be reviewed. Respondents do not reply to the argument of petitioners in support of the Petition for the writ of certiorari to review this case. Petitioners stated on P. 21 of their petition and brief that it is a well settled rule of law that federal courts follow the decision of the state court in the construction of a constitution or statute of the state, or the decision of the state court which has become a rule of property. We stated, however, in the original brief that there is an equally well settled rule of law that where a decision of the United States court has become a rule of property and property rights have vested because of a reliance upon the United States courts' decision, that no comity or respect for the state court will cause the United States Court to follow the decision of the state court and deprive a citizen of his property, that had vested under the authority and by reason of a reliance upon the rule of property announced by the United States court. This is the ground upon which petitioners rely in asking this court

to review the decision of the Circuit Court of Appeals and to reverse the same. Respondents have not replied to this argument, because, as we think, there is no answer to it.

We will not lengthen this brief by replying further to the argument of respondents in opposition to the petition. We submit that the petition should be granted and the writ issued, the cause reviewed and reversed.

T. W. DAVIS,
T. J. WILLS,
Attorneys for Petitioners.

I, T. J. Willis, one of the attorneys for petitioners, certify that I have this day mailed a true and correct copy of the forgoing reply brief of petitioners to Hon. F. C. Hathorn, one of the attorneys for respondents, Hattiesburg, Mississippi.

This, the 30th day of April, 1924

T. W. DAVIS,
T. J. WILLS,
Attorneys for Petitioners.

No. 363

Office Supreme Court, U. S.

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IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA

OCTOBER TERM, 1923

EDWARD HINES YELLOW PINE TRUSTEES,

Petitioners

vs.

ANNA F. C. MARTIN, ET ALS, Respondents

STATEMENT AND BRIEF FOR RESPONDENTS IN
OPPOSITION TO PETITION FOR WRIT OF
CERTIORARI.

CLAYTON D. POTTER,
HATHORN & WILLIAMS,
Attorneys for respondents.

1871

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**IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA**

OCTOBER TERM, 1923

EDWARD HINES YELLOW PINE TRUSTEES,

Petitioners

vs.

ANNA F. C. MARTIN, ET ALS, Respondents

**STATEMENT AND BRIEF FOR RESPONDENTS IN
OPPOSITION TO PETITION FOR WRIT OF
CERTIORARI.**

In the statement of this case, as contained in the petition for writ of certiorari and the brief of counsel for petitioners, there is a wide difference from the statement of the case as contained in the opinion of the Circuit Court of Appeals, whose decision it is sought to have reviewed by this court on certiorari.

We think the statement of the case as contained in the opinion of the Circuit Court of Appeals is a fair and a correct statement of the case made by the record before that Court for review, and because we think the opinion

of the court contains a fair and a correct statement of the case, we adopt that statement of the case as our statement of the case, and we here quote in full the opinion of the court, which is in the following words:

"The appellants as complainants below filed four bills separately on the chancery side of the Court against the individual defendants, describing pieces of property as follows: Anna F. C. Martin, the NE $\frac{1}{4}$ of SE $\frac{1}{4}$; F. C. Martin, SE $\frac{1}{4}$ of SE $\frac{1}{4}$; H. P. Lewis, SW $\frac{1}{4}$ of NW $\frac{1}{4}$; and George Lawrence, SE $\frac{1}{4}$ of NW $\frac{1}{4}$; all in Section 36, Twp. 2, South, of Range 15 West; praying in each bill to have the Court decree title in them and remove any claim of the defendant as a cloud upon their title. Each defendant answered the bill denying complainants title on various grounds and alleging title in himself or herself.

"These suits were subsequently consolidated and tried before the District Judge as one suit, upon the agreed statement of facts and documentary evidence, and a decree rendered whereby it was adjudged that the title to the lands was vested in the defendants and the prayers of the bills denied.

"The agreed statement of facts among other things stipulated that the lands in question were acquired by the State of Mississippi from the United States by Act of Congress approved September 28th 1850; that whatever title complainants have depends upon the patent issued to the Pearl River Improvement & Navigation Company, by the State of Mississippi, June 27th 1871, and vested in the complainants by mense conveyances, the production of which is waived; that complainants acquired their title January 1st, 1918; That whatever title defend-

ants have was acquired through the patent issued by the State of Mississippi, December 7th, 1883, to Mose Mitchell, through mense conveyances, the production of which is waived.

"That the taxes on the land were paid by the predecessors in title of the defendants for the years 1892, 1903 and 1905; that the complainants or their predecessors in title paid the taxes for the remaining years from 1890 to 1922 inclusive, and that the parties do not know who paid such taxes prior to 1890.

"It is further admitted that the patent to the Pearl River Improvement and Navigation Company, under which complainants claim is the same patent involved in the cases of Southern Pine Co., vs. Hall, 105 Fed. 84, and Becker vs. Columbia Bank, 73 So. 798, but these particular lands were not involved in these suits; that there was a bond filed in the office of the Secretary of State purporting to be the bond required by the Act of April 8th, 1871 of the Legislature of the State of Mississippi, which bond is set out in words in the cases of Hardy vs. Hartman, 65 Miss. 505; Southern Pine Co. vs. Hall, and Becker vs. Columbia Bank, *supra*.

"Pursuant to this agreed statement of facts, a copy of the patent to the Pearl River Improvement & Navigation Company and a copy of the patent to Mose Mitchell were introduced and filed in evidence.

"The District Judge in the trial and disposition of the cases followed the decisions of the Supreme Court of Mississippi in the construction of the Act of the Mississippi

Legislature of 1871, rather than the decision of the Circuit Court of Appeals in the Southern Pine Co. vs. Hall, *supra*.

"In the case of Hardy vs. Hartman, 65 Miss. 505, the Supreme Court of Mississippi in 1888 decided that the giving the bond required by Section 5 of the Act of 1871 incorporating the Pearl River Improvement & Navigation Company, was a condition precedent to the issuance of the patent provided for in said Act; that this condition precedent had not been complied with before the patent, the basis of complainants' title, was issued to the company and therefore such patent was void and did not divest the title of the State.

"The bond referred to in the agreed statement of facts is set out in the statement of the above case, and is as follows:

'Bond.

'Pearl River Improvement and Navigation Company.

'Know all men by these presents, that we, Walter P. Billings, Samuel A. Vose, A. Warner, O. C. French, are held and firmly bound unto the State of Mississippi in the sum of Fifty thousand dollars, the payment of which well and truly to be made, we bind ourselves, our heirs and executors, jointly and severally, by these presents. The condition of the above bond is such, that whereas by an Act of the Legislature of the State of Mississippi, entitled, 'An Act to incorporate the Pearl River Improvement and Navigation Company, and for other purposes,' a company was incorporated called the Pearl River Im-

provement & Navigation Company, which company is charged with certain duties and bound by certain conditions in said Act specified. Now, if said company will well and truly perform, or cause to be performed, all the acts and things mention in said act of incorporation, and comply with all the terms and conditions in accordance with the tenor and meaning of said act, then this bond to be void, otherwise to remain in full force and effect.

'In witness whereof said persons have hereunto set their hands and seals this 7th day of April, 1871.

W. P. Billings (Seal)
(by S. A. Vose, his attorney)
S. A. Vose (Seal)
A. Warner (Seal)
O. C. French (Seal)

'Approved May 12th, 1871.

J. L. TLCORN, Governor.'

"The question of the validity of the patent to the Pearl River Improvement and Navigation Company, was again before that Court in Becker vs. Columbia Bank, 73 So. 798, when the Court again held the patent void and declared the former decision to be a rule of property in the State. Since the decision of this case, two other cases have been before the Supreme Court of Mississippi. In these cases the Court reversed the case awarding damages to the State and affirmed the chancery decree dismissing the bill. On suggestion of error seeking to have the Court declare that the distinction drawn in that

option between that case and Tynes vs. Southern Pine Company, unsound, they say 'We are not concerned here with the correctness of the decision in Hardy vs. Hartman and the rule there applied, whether correct or not to titles derived through the patent issued to the Pearl River Improvement and Navigation Company, has become a rule of property and will not be departed from.'

"In the case of Southern Pine Co., vs. Hall, 105, Fed. 84, the Circuit Court of Appeals reached the conclusion that the bond was a compliance with the statute and the patent issued to the Pearl River Improvement & Navigation Company was valid. The Supreme Court of the United States refused a certiorari in this case.

"We have therefore the question whether the rule of title to real property as decided by the Supreme Court of the State of Mississippi should be applied in this case as was done by the District Judge. We think that is the proper rule, and that there is no error in the decree. There cannot be two contradictory rules of title to real property dependent upon the statutes of a state. The construction of such statutes by the highest Court of the State is binding upon the Courts of the United States in cases not falling within some narrow exceptions.

"This rule of property has existed in the State of Mississippi since 1888, and being such it will be applied by this Court in deciding cases arising under the Statute.

"As said by the Supreme Court in the case of Jackson ex dem. St. John vs. Chew, 12 Wheat, 161, 'The inquiry is very much narrowed, by applying the rule which has uniformly governed this court, that where any principle of law, establishing a rule of real property, has been settled in the state courts, the same rule will be applied by this court, that would be applied by the state tribunals. This is a principle so obviously just, and so indispensibly necessary, under our system of government, that it cannot be lost sight of.'

"The same rule was applied in the case of James H. Suydam vs. Wm. H. Williamson, 24 Howard 427, and recognized by many decisions of the Supreme Court following.

"The decree of the District Court is
AFFIRMED."

From the foregoing opinion and by an examination of the answer of each defendant to the bills of complaint it will be observed that all of the averments of title by complainants were specifically denied. No evidence was introduced by complainants in support of their title except the patent from the State of Mississippi to the Pearl River Improvement & Navigation Company. It was admitted by the agreed statement of fact that complainants owned such title, and such title only, as passed to the Pearl River Improvement & Navigation Company by this patent; that whatever title complainants have depends upon the said patent; and that complainants acquired heir title January 1, 1918.

It will be further observed that by the agreed statement of facts it was admitted that the patent to the Pearl River Improvement & Navigation Company, under which complainants claimed title, is the same patent involved in the cases of Southern Pine Co., v. Hall 105 Fed. 84, and

Becker v. Columbia Bank, 73 So. (Miss.) 798, but that these particular lands were not involved in these suits; that a bond was filed in the office of the Secretary of State purporting to be the bond required by the Act of the Legislature of the State of Mississippi approved April 8, 1871, which bond is set out in the cases of Hardy v. Hartman, 65 Miss., 505, and Southern Pine Company, v. Hall, *supra*, and Becker v. Columbia Bank, *supra*.

It will be further observed from the opinion of the Circuit Court of Appeals in the instant case that the Supreme Court of Mississippi held in 1888, in the case of Hardy v. Hartman, 65 Miss., 505, that the giving of the bond required by Section 5 of the Act of 1871 incorporating the Pearl River Improvement & Navigation Co., was a condition precedent to the issuance of the patent provided for in said act; that this condition precedent had not been complied with before the patent, which is the basis of complainants' title, was issued to the Company, and therefore such patent was void and did not divest the title of the State; that the question of the validity of the patent to the Pearl River Improvement & Navigation Company was again before the Mississippi Supreme Court in Becker v. Columbia Bank, 73 So. (Miss.) 798, when the court again held the patent void and declared its former decision in the case of Hardy v. Hartman to be a rule of property in the State; and that thereafter two other cases (Edward Hines Yellow Pine Trustees v. State of Mississippi and State of Mississippi v. Edward Hines Yellow Pine Trustees, 98 So. 158) were before the Supreme Court of Mississippi, wherein they said, in response to suggestion of error, "We are not concerned here with the correctness of the decision in Hardy v. Hartman and the rule there applied, whether correct or not to titles derived through the patent issued to the Pearl River Improvement & Navigation Company, has become a rule of property and will not be departed from."

It will be further observed that the only question made by the record in the instant case and presented to the District Court and to the Circuit Court of Appeals was the question whether the rule of title to real property dependent upon the statute of the State as construed and declared by the Supreme Court of Mississippi in the cases cited, *supra*, should be followed and applied by the Federal Court; or whether this rule of title should be disregarded, and a contradictory rule of title dependent upon said statute should be established by the Federal Court.

The Circuit Court of Appeals reached the conclusion that there cannot be two contradictory rules of title to real property dependent upon the statutes of a State; that the construction of such statutes by the highest court of the State is binding upon the Courts of the United States in cases not falling within some narrow exceptions; and that this rule of property has existed in the State of Mississippi since 1888, and being such it will be applied by the Federal Courts in deciding cases arising under the Statute.

BRIEF.

POINT I.

The petition in this case does not show any grounds justifying the issuance of a writ of certiorari.

The effect of the petition for certiorari in this case is to ask this Court to bring up for review the action of the Circuit Court of Appeals in following the settled course of decisions of the Supreme Court of Mississippi, existing since 1888, construing the statute of the State approved April 8, 1871, creating the Pearl River Improvement & Navigation Company, and fixing a rule of title to all lands claimed through the patent issued to the Pearl River Improvement & Navigation Company under said statute.

The record in this case presents a clash of interest between private litigants over the title to land. There is no question of importance involved which it is in the public interest to have decided by this Court; and the case does not present a conflict in decision of the Circuit Courts of Appeals of the nine circuits.

The jurisdiction of this Court to review by certiorari final decisions of the Circuit Court of Appeals is exercised sparingly, and is never extended except in cases of peculiar gravity and general importance to the public, and in cases where there is a conflict in decisions of the Circuit Courts of Appeals of the nine circuits.

Layne & Bowler Corp. v. Western Well Works 261 U. S. 387, 67 L. Ed. 712;

Mangum Import Co. v. De Spoturno Co. 262 U. S. 159, 67 L. Ed. 922;

Ex parte Lau Ow Bew, 12 Sup. Ct. 43, 141 U. S. 583, 35 L. Ed. 868;

In Re: Woods, 12 Sup. Ct. Rep. 417, 143 U. S. 202, 36 L. Ed. 868;

Lau Ow Bew v. U. S., 12 Sup. Ct. 517, 144 U. S. 47, 36 L. Ed. 340;

American Const. Co. v. Ry. Co., 13 Sup. Ct., 758, 148 U. S. 372, 37 L. Ed. 486;

The 3 Friends, 17 Sup. Ct. Rep., 495, 166 U. S. 141.

Forsyth v. Hammond, 17 Sup., Ct., 665, 166 U. S., 506, 41 L. Ed. 1095;

Fields v. U. S., 27 Sup. Ct., 543; 205 U. S., 292, 51 L. Ed. 807;

McClelan v. Carland, 30 Sup. Ct., 501, 217 U. S. 268, 54 L. Ed. 762;

U. S. v. Rimer, 31 Sup. Ct., 596, 220 U. S. 547, 55 L. Ed. 578;

In the case of *Magnum Import Co. v. De Spoturno Coty*, supra, this Court said, speaking through Chief Justice TAFT:

"The question how the court should exercise this power next arises. The jurisdiction to bring up cases by certiorari from the Circuit Court of Appeals was given for two purposes; first, to secure uniformity of decision between those courts in the nine circuits; and, second, to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort. The jurisdiction was not conferred upon this court merely to give the defeated party in the Circuit Court of Appeals another hearing. Our experience shows that 80 per cent of those who petition for certiorari do not appreciate these necessary limitations upon our issue of the writ. When, therefore, after the petition is filed and before its submission, an application is made for a suspension of the judgment or decree of the Circuit Court of Appeals, a heavy burden rests on the applicant."

In the case of *Layne & Bowler Corp. v. Western Well Works*, supra, this Court said, speaking through Mr. Chief Justice TAFT:

"It is manifest from this review of the conclusions in the two circuits as to the validity of the Layne patent and the proper construction to be put upon the 9th, 13th, and 20th claims, that they were really in harmony and not in conflict, and that there was no ground for our allowing the writ of certiorari to add to an already burdened docket. If it be suggested that as much effort and

time as we have given to the consideration of the alleged conflict would have enabled us to dispose of the case before us on the merits, the answer is that it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals. The present case certainly comes under neither head."

Manifestly the action of the Circuit Court of Appeals in following this settled course of decisions of the Supreme Court of Mississippi, extending over a period of nearly forty years without the discordant note of a dissenting opinion, construing the Act of April 8, 1871, and fixing a rule of property governing the title to all lands claimed under the patent issued to Pearl River Improvement & Navigation Company under said Act, does not present a case falling within the class which will be reviewed by this Court on certiorari.

Under the provisions of Section 128 of the Judicial Code the Judgment of the Circuit Court of Appeals in this case is final. An examination of the petition for certiorari and the transcript of the record of the proceedings will disclose that no ground for review by certiorari is presented, but that this is a case of a defeated litigant seeking another hearing before this Court in a suit where final appellate jurisdiction is expressly conferred by law on the Circuit Court of Appeals.

POINT II.

The application for writ of certiorari is made too late.

Section 6 of the Act of September 6, 1916 (chap. 448

39 Stat. at L. 726, 727, Comp. Stat. Section 1228a, Fed. Stat. Anno. Supp. 1918, p. 422), directs:

"That no writ of error, appeal, or writ of certiorari intended to bring up any cause for review by the Supreme Court shall be allowed or entertained unless duly applied for within three months after entry of the judgment or decree complained of."

The final decree of the Circuit Court of Appeals was entered in this case on January 16, 1924. The application for the writ of certiorari, therefore, must have been made on or before April 16, 1924, otherwise it would come too late. *Toledo Scale Company v. Computing Scale Company*, 261 U. S. 399, 67 L. Ed. 719.

We are in receipt of a letter from the Clerk of this Court, under date of April 19, 1924, wherein we are advised that the Clerk has received from petitioners certain papers in the case for use on the application for certiorari but the case had not been docketed because counsel had not complied with the necessary requirements up to that time. Our interpretation of this letter from the Clerk is that at the time of writing, April 19, 1924, no application for writ of certiorari had been made as required by law and the rules of this Court.

We respectfully submit that, if we have correctly interpreted this letter, the application was not made within three months after the entry of the final decree of the Circuit Court of Appeals sought to be reviewed; and that, therefore, this Court should not entertain the application for the writ.

POINT III.

The decision of the Circuit Court of Appeals sought to be reviewed on certiorari is correct.

In the case of *Hardy v. Hartman*, 65 Miss. 505, the Supreme Court of Mississippi construed the Act of April 8, 1871, creating the Pearl River Improvement & Navigation Company and held that the patent issued to said Company under this statute was void because the bond required by the statute was not executed and filed by the Company. In the case of *Becker v. Columbia Bank*, 73 So. (Miss.) 798, the Supreme Court of Mississippi again held that said patent was void for the reason that the bond required by the statute was never executed, and also held that the rule applied in *Hardy v. Hartman*, *supra*, was a rule of property governing all titles claimed through patents issued to Pearl River Improvement & Navigation Company under said statute. In the case of *Edward Hines Yellow Pine Trustees v. State of Mississippi* 98 So. (Miss.) 158, on suggestion of error, the Supreme Court of Mississippi again held that the decision in *Hardy v. Hartman* *supra*, and the rule there applied to titles derived through patents issued to the Pearl River Improvement & Navigation Company has become a rule of property and will not be now departed from.

There is an unbroken line of decisions by the Supreme Court of the United States, beginning with the case of *Jackson Ex. Dem. St. John v. Chew*, 12 Wheat. 153, (6 L. Ed. 583), establishing a rule which has uniformly governed the Federal Courts, that where any principle of law, establishing a rule of property, has been settled in the state court, the same rule will be applied by the Federal Courts that would be applied by the State Courts, and that this rule will govern the Federal Courts, whether the decisions of the State Court establishing a rule of property are grounded on the construction of the statutes of the State or form a part of the unwritten law of the

State. This rule has been reaffirmed and applied by the Supreme Court of the United States time and time again, and especially in the following cases:

Beauregard v. New Orleans, 18 How. 497 (15 L. Ed. 470);

Suydam v. Williamson 24 How. 427 (16 L. Ed. 742);

Nichols v. Levy 5 Wall. 433, (18 L. Ed. 596);

Williams v. Kirtland 13 Wall, 306 (20 L. Ed.);

Barrett v. Holmes 12 Otto 651 (26 L. Ed. 291);

Warburton v. White 176 U. S. 496 (44 L. Ed. 559);

Guffey v. Smith 237 U. S. 101 (59 L. Ed. 856);

Green v Neal 6 Peters 291 (8 L. Ed. 402)

Wade v. Travis County, 174 U. S. 508, 43 L. ed. 1064;

Bucher v. Cheshire R. Co., 125 U. S. 555, 31 L. ed. 795.

League v. Egery, 24 How. 264, 16 L. ed. 655;

Smith Purifier Co. v. McGroarty, 136 U. S. 237, 34 L. ed. 346;

Burgess v. Seligman, 107 U. S. 20, 27 L. ed. 365;

Barker v. Eastman, 192 Fed. 659;

Highland Park Mfg. Co. v. Steele, 232 Fed. 10.

After a careful search, we have been unable to find a single case holding contrary to or even qualifying the rule that the Federal Courts will always conform their decisions to those of the State Courts, and will follow the

decisions of the State Courts, where those courts have, by a settled course of decisions, established rules of property affecting land titles, and especially where those rules of title arise out of the construction by the State Courts of the statutes upon which such titles depend. We have carefully examined all of the cases cited by counsel for petitioners, and none of those cases conflict with or qualify this rule. Such of the cases cited by counsel for petitioners as touch upon or speak of this rule expressly recognize it. In fact, there is no better statement of the rule to be found in any of the books than the statement and recognition of the rule in the case of *Burgess v. Seligman*, 107 U. S. 20, 27 L. Ed. 359, cited and relied on by counsel for petitioners.

Not only will the Federal Courts always conform their decisions to those of the State Courts in such cases, especially where such decisions involve a construction of statutes of the State upon which such titles depend; but the Federal Courts will go further and will overrule their own decisions in order to conform to the decisions of the State Courts fixing such rules of property in such cases. *Green v. Neal*, 6 Peters 291, 8 L. Ed. 402; *Suydam v. Williamson*, 24 How. 427, 16 L. Ed. 742.

POINT IV.

Petitioners not in position to rely upon Chapter 114 of Laws of Mississippi of 1875 as ratifying their title.

It is claimed by petitioners that this Court should review and reverse the decision of the Circuit Court of Appeals because they say now, and for the first time in this Court, that their title to the lands involved was approved and ratified by the Legislature of the State of Mississippi, chapter 114 of the Laws of Mississippi, approved April 19, 1873. This statute is set out in full as appendix "C" to the petition for certiorari at pages 35, 36, and 37 thereof.

This statute is a private Act of the Legislature. It was not pleaded, proven nor relied on in the trial Court; it was not raised nor relied on before the Circuit Court of Appeals; and it is first pleaded, proven, raised, and relied on in this Court on petition for certiorari and as a ground for asking this Court to review the case on certiorari and reverse the same.

Where a litigant relies on a private Act of the Legislature, he must plead it specially and must prove it. 1 Chitty's Pl. 238; 20 Encyc. Pl. & Prac. 595; 36 Cyc. 1238; *Garlich v. Northern Pac. Ry. Co.* 131 Fed. 837, 67 C. C. A. 237. Since petitioners neither pleaded, proved nor relied on this private Act in the trial Court, and did not raise or rely upon it in the Circuit Court of Appeals, they are not in position now to raise and rely upon the same by pleading, proving and relying on it for the first time on petition for certiorari to bring the case before this Court for review.

If petitioners expected to rely on this private Act of the Legislature as a ratification of their title, they should have pleaded it and proved it in the District Court and should have relied on it in the Circuit Court of Appeals.

If petitioners had pleaded and relied on this in the District Court, respondents would have had an opportunity to meet the issue by proper pleading and proof; the District Court would have been afforded an opportunity to pass upon this issue under proper pleadings and proof; and the Circuit Court of Appeals would have been given an opportunity to review the decision of the District Court upon the same.

Manifestly petitioners are seeking to have this Court take judicial notice of this private Act of the Legislature pleaded and relied on for the first time by them in their petition for certiorari. This Court is a Court for

review. It will not permit litigants to frame their pleadings and offer their proof for the first time on an application for certiorari to review the case, or upon a review of the case on certiorari; neither will the Court make petitioners' case other than they made it in the District Court by taking judicial notice of a private Act of the Legislature which petitioners did not choose to rely on in their pleadings. If this Court could or would in any case take judicial notice of a private Act of the Legislature of a State, the pleadings of the party relying upon it would have to present the same before resort would be had to judicial knowledge by the Court. *Mining Co. v. McFadden*, 180 U. S. 533, 45 L. Ed. 656; *Oregon S. L. & W. N. R. Co. v. Skottowe*, 162 U. S. 490, 40 L. Ed. 1048. In *Mining Co. v. McFadden*, *supra*, this Court said:

"But the Circuit Court could not make plaintiff's case other than they make it by taking judicial notice of facts which they did not choose to rely on in their pleadings. The averments brought no controversy in this regard into Court, in respect of which resort might be had to judicial knowledge. Thayer *Treatise on Evidence*, ch. VII; *Oregon S. L. & W. N. R. Co., v. Skottowe*, 162 U. S. 490, 40 L. Ed. 1048, 16 Sup. Ct. Rep. 869."

In this connection we also call to the attention of the Court that by the agreed statement of facts petitioners admit that the validity of their title is entirely dependent upon the patent issued to the Pearl River Improvement & Navigation Company under the Act of April 8, 1871, set out as appendix "B" to the petition for certiorari.

We respectfully submit, therefore, that we are not called upon now to meet an issue raised by petitioners for the first time in this Court on their application for certiorari,—an issue which they did not choose to make and rely upon in the District Court and in the Circuit Court of Appeals.

Irrespective, however, of the merits of the case, the petition for certiorari and the record accompanying same fail to present a case calling for the exercise of the jurisdiction of this Court to review by certiorari the decision of the Circuit Court of Appeals. We respectfully submit, therefore, that the petition ought to be denied.

Respectfully submitted,

CLAYTON D. POTTER.
HATHORN & WILLIAMS,
Attorneys for respondents.

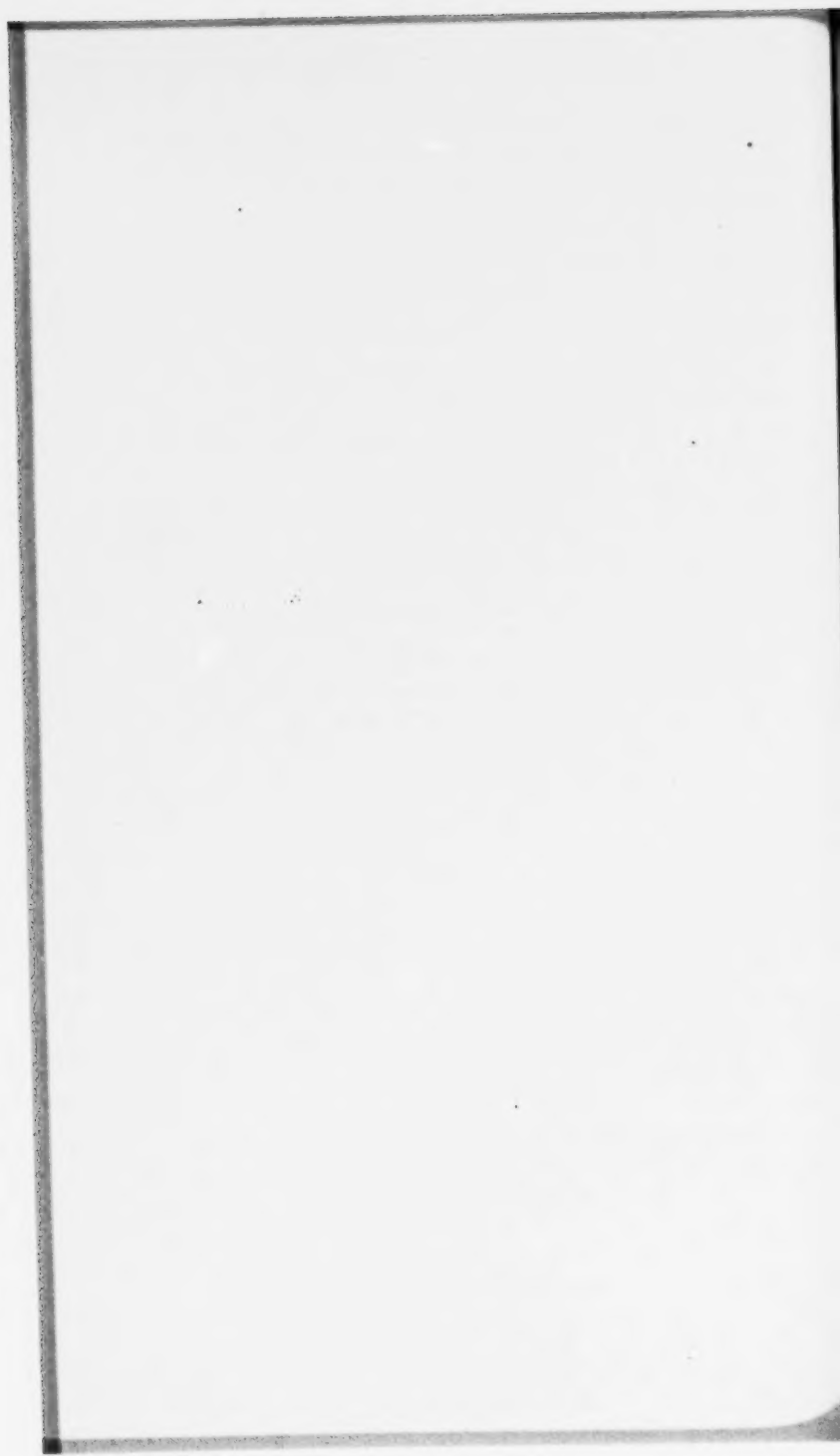
We, the undersigned attorneys for respondents in the above styled cause, hereby certify that we have this day delivered to T. J. Wills, of counsel for petitioners, a true and correct copy of the foregoing statement and brief.

Signed this 30th day of April, 1924.

CLAYTON D. POTTER,
HATHORN & WILLIAMS,
Attorneys for respondents.

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APR 23 1926

WM. B. STANBURY
CLERK

**IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA**

OCTOBER TERM, 1924

No. 363

**EDWARD HINES YELLOW PINE TRUSTEES,
PETITIONERS,**

vs

**ANNA F. C. MARTIN, F. C. MARTIN, H. P. LEWIS
AND GEORGE LAWRENCE
RESPONDENTS**

**ON A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

STATEMENT AND BRIEF FOR RESPONDENTS

**WILLIAM H. WATKINS,—Jackson, Miss.
FLEET C. HATHORN,—Hattiesburg, Miss.
HATHORN & WILLIAMS,—Poplarville, Miss.
Attorneys for Respondents.**



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STATEMENT AND BRIEF FOR RESPONDENTS

ABSTRACT OR STATEMENT OF THE CASE

Petitioners here, who were appellants in the Circuit Court of Appeals for the Fifth Circuit, filed suit on the equity side of the docket of the United States District Court for the Southern Division of the Southern District of Mississippi against the defendants there, who were appel-

tees in the Circuit Court of Appeals and who are respondents in this Court. The suits were four in number but were identical except for the different or several claims of ownership by each defendant to the separate parcels of land involved. The cases were consolidated by agreement on the hearing in the District Court, and as so consolidated were heard on appeal in the Circuit Court of Appeals, and as so consolidated are to be heard by this Court..

The purpose of each suit was to quiet and confirm title asserted by complainants, which claimed title originated under an alleged patent from the State of Mississippi to Pearl River Improvement & Navigation Company issue on June 27, 1871; and to cancel the asserted title of defendants, which asserted title originated under a patent from the State of Mississippi to Mose Mitchell issued on December 7, 1883.

On the hearing of the case, the District Court applied the rule announced in the case of Hardy Vs. Hartman, 65 Miss. 504, declared by the Supreme Court of Mississippi in the case of Becker Vs. Columbia Bank, 112 Miss. 819, 73 South. 798, and in the case of Edward Hines Yellow Pine Trustees vs. State Ex. Rel. Moore, 134 Miss. 533, 534, 98 South, 158, to be a rule of property, and also followed the rule announced by the Supreme Court of Mississippi in the case of Tynes Vs. Southern Pine Company, 100 Miss. 129, 54 South. 885, and held that the alleged patent to Pearl River Improvement and Navigation Company is void; and held that the patent to Mose Mitchell is valid; and dismissed the bills of complaint and decreed title to the land in defendants.

From the decree of the District Court dismissing the bills of complaint and adjudicating title to the land in defendants, the complainants appealed to the Circuit Court of Appeals for the Fifth Circuit. The Circuit Court of

Appeals applied the rule of property fixed by the Supreme Court of Mississippi in *Hardy Vs. Hartman*, *Supra*, and applied in *Becker Vs. Columbia Bank*, *Supra*, and in *Edward Hines Yellow Pine Trustees Vs. State*, *Ex. Rel Moore*, *Supra*, and affirmed the decree of the District Court. The opinion of the Circuit Court of Appeals affirming said decree of the District Court is reported in 296 Fed. Rep. 442; and the said opinion is set out in full at pages 79 to 82 of the record in the case at bar.

STATEMENT OF THE PLEADINGS

The complainants filed in each suit their bill of complaint wherein they derainged title to the land in each case as follows: (a) a donation from the United States to the State of Mississippi under act of congress approved September 28, 1850, commonly called the "Swamp Land Act": (b) patent from the State of Mississippi to Pearl River Improvement and Navigation Company dated June 27, 1871, and issued in virtue of an act of the legislature of Mississippi approved April 8, 1871; (c) deed from Pearl River Improvement & Navigation Company to M. S. Baldwin dated November 20, 1872; (d) deed from Samuel A Vose, attorney in fact for M. S. Baldwin to Israel Hall dated April 17, 1873; (e) deed from Israel Hall to Charlotte H. Eastman dated about the year 1887 and unrecorded (f) Quit claim deed from Olivia B. Hall, sole legatee of Israel Hall, to Charlotte H. Eastman dated July 23, 1900, and executed by said Olivia B. Hall as such, to take the place of said unrecorded deed from Israel Hall to Charlotte H. Eastman; (g) deed from M. S. Baldwin to Charlotte H. Eastman dated May 13, 1904, and executed to take the place of said deed from Samuel A. Vose, attorney in fact for M. S. Baldwin, to Israel Hall; (h) deed from Charlotte H. Eastman and Sidney C. Eastman, her husband, to Wyatt Lumber Company dated July 5, 1905; (i) quit claim deed from Wyatt

Lumber Company to the Complainant dated January 1, 1918. (R. 1 and 2, R. 8 and 9; R. 15 and 16; R. 23 and 24).

The complainants averred in each suit that each defendant claimed to own a forty acre tract of the land by a title set out in the bill of complaint as follows: a patent from the State of Mississippi to Mose Mitchell dated December 7, 1883; deed from Mose Mitchell to S. L. Woolridge dated December 27, 1883; a deed from S. L. Woolridge to Eugene Martin dated January 23, 1885; deed Eugene Martin to J. G. Barrett dated January 23, 1885; deed from J. G. Barrett to Henry Clifton Rodes dated July 21, 1888; deed from Henry Clifton Rodes to Southern Pine Company dated August 6, 1889. As to the forty acre tract claimed by the defendant, Anna F. C. Martin, the bill averred that the Southern Pine Company conveyed the same to her by a deed dated January 26, 1909. As to the forty acre tract claimed by the defendant, F. C. Martin, the bill averred that the Southern Pine Company conveyed the same to him by a deed dated January 26, 1909. As to the forty acre tract claimed by the defendant, H. P. Lewis, the bill averred that the Southern Pine Company conveyed the same to D. W. Blake by a deed dated January 26, 1909; and that said D. W. Blake conveyed the same to the defendant, H. P. Lewis, by a deed dated June 24, 1920. As to the forty acre tract claimed by the defendant, George Lawrence, the bill averred that the Southern Pine Company conveyed the same to Cecile Dowling by a deed dated January 26, 1909; and that said Cecile Dowling conveyed the same to the defendant, George Lawrence, by a deed dated June 12, 1920. (R. 2 and 3; R. 10; R. 17; R. 24.)

The complainants averred in each suit that in the year 1905 there was litigation in the District Court of the United States for the Southern Division of the Southern District of Mississippi between the Southern Pine Company and Olivia B. Hall, who it was claimed was complainant's predecessor in title, in which litigation the

title of said Olivia B. Hall was upheld by the decision of the Circuit Court of Appeals for the Fifth Circuit, as reported in 105 Fed. page 84; which litigation it is claimed was concerning lands and titles similar to those under which the lands here in controversy are held and claimed; and complainants averred that the lands involved in the suit at bar were, through inadvertance or mistake, left out of the pleadings and decree in said controversy. (R. 3; R. 10 and 11; R. 18; R. 25.)

The complainants averred in each suit that they and their alleged predecessors in claim of title were purchasers for value. (R. 7; R. 14; R. 21; R. 28)

There were other averments in the bill which are immaterial to be noted here.

The defendant in each suit filed a sworn answer. Each defendant in his answer denied the derainment of title of the complainants, except as to the grant of the land from the United States to the State of Mississippi under the act of September 28, 1850, which grant was admitted by defendants. The answers admitted that the defendants claimed title to the land under the patent to Mose Mitchell and the deeds set out in the bill of complaint and therein alleged to be the chain of title under which said defendants claimed title to the land. The answers admitted that there had been litigation between Olivia B. Hall and Southern Pine Company; but expressly denied that this litigation affected or involved the title to the land described in the bills of complaint; and expressly denied that the litigation in said former suit was concerning land and titles similar to those under which the land here in controversy are held and claimed; and expressly denied that the lands here involved were through inadvertance or mistake, left out of the pleadings and decree in said former controversy. The answers also denied that the complainants and their alleged predecessors in claim of title were purchasers for value. (R. 29 to 34; R. 39 to 44; R. 48 to 53; R. 57 to 62.)

In addition to these denials, each answer avers that the Supreme Court of the State of Mississippi, in the case of Hardy V. Hartman, reported in 65 Miss. 504, and also in the case of Becker Vs. Columbia Bank, reported in 112 Miss. 819, construed the patent issued to the Pearl River Improvement & Navigation Company under the act of the legislature of Mississippi approved April 8, 1871, and held that said patent was void because it did not appear from the record that the bond required of the Pearl River Improvement & Navigation Company by the said statute under which the patent was issued had been executed; and that the decision of the Supreme Court of Mississippi in the case of Hardy V. Hartman, *Supra*, had become a rule of property and had been so declared by the Supreme Court of Mississippi in the case of Becker V. Columbia Bank, *supra*, as to all title claimed under a patent to the said Pearl River Improvement & Navigation Company, and that all parties acquiring property in the state of Mississippi had a right to rely on said rule of property, and that for this reason the claim of title being asserted by complainants to the lands involved in this suit based upon the patent to the Pearl River Improvement & Navigation Company issued in virtue of the assumed authority of said statute is void. (R. 36 and 37; R. 45 and 46; R. 55; R. 64.)

The answer in each case also averred that by section 6, article 8, of the constitution of Mississippi of 1868 (ratified December 1, 1869) a common school fund was established to consist of the proceeds of the sale of the swamp land granted to the state under the act of Congress approved September 28, 1850, "except the swamp land lying and situated on Pearl River, in the counties of Hancock, Marion, Lawrence, Simpson, and Copiah"; that at the time of the enactment of the statute creating the Pearl River Improvement & Navigation Company and at the time of the issuance of said patent to the Pearl River Improvement & Navigation Company under the assumed authority of said statute, the said provision of the constitution was in full force and effect, and said patent was

violative of this provision of the constitution and was void to the lands involved in this suit for the reason that these lands are neither on nor near Pearl River, but are remotely situated from Pearl River, are more than 18 miles east of Pearl River and lie east of the range of hills that divide the watershed of Pearl River from that of Wolf River, and actually lie east of Wolf River upon a tributary of Wolf River flowing into it from the east; that the lands involved in this suit were not authorized to be patented to the Pearl River Improvement & Navigation Company, because not located on Pearl River, but that the same were a part of the lands set apart by the constitution of 1868 (ratified December 1, 1869) to be sold for school purposes. The answers further averred that the Supreme Court of Mississippi, in the case of *Tynes V. Southern Pine Company*, reported in 100 Miss. 129, in construing a patent issued to the Pearl River Improvement & Navigation Company under said statute for swamp lands which were not located on Pearl River, held that the patent was void as to such lands for the reason that said lands were not located on Pearl River, and the legislature of the state of Mississippi was prohibited by section 6, article 8 of the constitution of 1868 (ratified December 1, 1869), from donating to anybody for any purpose the swamp and overflowed lands not situated on Pearl River. (R. 35 and 36; R. 44 and 45; R. 54 and 55; R. 63 and 64.)

STATEMENT OF FACTS

On the trial of the case in the District Court, no evidence was offered on the issues jointed except (1) an agreed statement of facts (R. 67 to 71), the substance of which is hereinafter set out; and (2) the patent from the State of Mississippi to Pearl River Improvement and Navigation Company (R. 71 and 72); and (3) the patent from the State of Mississippi to Mose Mitchell (R. 73); and a map of Pearl River County (Referred to at page

74 of the Record, but not therein copied.)

The agreed statement of facts signed by the parties and offered in evidence contained the following admissions: (1) That the State of Mississippi acquired title to the lands involved in this suit under the act of congress approved September 28, 1850, and the same were owned by the state at the time of the enactment of Chapter 34 Laws of Mississippi of 1852, approved March 12, 1852; (2) that whatever title, if any, to said lands was vested in the Pearl River Improvement & Navigation Company by the patent offered in evidence by complainants passed to and is now claimed by complainants by mesne conveyances from Pearl River Improvement & Navigation Company to complainants, and that complainants acquired their claim to the land by a deed dated January 1, 1918; (3) that whatever title, if any, to said land was vested in Mose Mitchell by the patent offered in evidence by defendants passed to and is now claimed by the defendants by mesne conveyances from said Mose Mitchell to defendants, and that each defendant acquired his claim to the particular land claimed as follows: Anna F. C. Martin by deed dated January 26, 1909; and F. C. Martin by deed dated January 26, 1909, and H. P. Lewis by deed dated June 14, 1920, and George Lawrence by deed dated June 12, 1920; (4) there was an agreement showing diversity of citizenship of complainants with defendants, and that the lands in each case were worth more than \$3,000.00; (6) there was an agreement showing the location of the lands as to County, etc.; (7) there was an agreement showing that the lands involved in this suit were located on Wolf River, outside the Pearl River watershed and about 20 miles from Pearl River, etc; (8) there was an agreement relative to the disposition of certain lands within a mile of Pearl River, etc.; (9) it was agreed, among other things, that all lands in Pearl River County which were patented to the Pearl River Improvement & Navigation Company under the act ap-

proved April 8, 1871, creating said company, were afterwards sold by the State of Mississippi and patented to divers persons under the general laws of the state providing for the disposal of the swamp land; (10) it was agreed that a copy of the map of Pearl River County, a copy of patent to Pearl River Improvement & Navigation Company and a copy of patent to Mose Mitchell might be introduced in evidence and considered as part of the record, subject only to objection for incompetency or irrelevancy; (11) it was agreed that the patent to Pearl River Improvement & Navigation Company offered in evidence by complainants is the same patent which was involved in the case of Southern Pine Company v. Hall, reported in 105 Fed. Rep. page 84, and in the case of Becker v. Columbia Bank, reported in 112 Miss. 819, but that the lands involved in the present litigation were not involved in either of these suits; (12) it was agreed that there is not on file with any officer of the state of Mississippi either a bond or any evidence of the filing of a bond required by the act of the legislature of Mississippi approved April 8, 1871, creating the Pearl River Improvement & Navigation Company, but that there was at one time on file in the office of the secretary of state a bond purporting to be the bond required by said act of April 8, 1871, which is the same bond referred to an set out **per haec verba** in the case of Hardy V. Hartman, Supra, as reported in 65 Miss. at page 505, and in the case of Southern Pine Company V. Hall, Supra, and also referred to in Becker V. Columbia Bank, Supra; (13) it was agreed that every issue of law and fact in each of said four suits is the same and will be settled by one trial of the four suits together, except such difference, if any, as might arise out of the difference in the dates on which each defendant acquired his deed to the land involved in each separate suit, and that either party feeling aggrieved at the decree entered in any one of the four cases might appeal; and (14-) it was agreed that the agreed statement of facts, and the documentary evidence therein provided to be introduced, together with the pleadings in each case,

shall constitute the record upon which the four cases are to be tried, and that the same shall be tried without a stenographer, and that it will not be necessary to take a bill of exceptions for the purpose of getting the said documentary evidence and the agreed statement of facts incorporated into the record for an appeal, and that the agreed statement of facts together with the documentary evidence referred to therein, with the consent of the court given in open court, is made a part of the record in all four cases.

ARGUMENT

From the foregoing abstract or statement of the case, it is to be noted that the case at bar was tried on bill and answer, agreed statement of facts and the documentary evidence referred to therein.

Under these pleadings and this agreed statement of facts and this documentary evidence, the question presented for decision by the District Court and the question presented for decision by the Circuit Court of Appeals and the question presented for decision by this Court, if it is to be held upon further consideration that the writ of certiorari was not improvidently granted is whether the Federal Courts will follow the decisions of the Supreme Court of Mississippi and apply in this case (a) the rule applied by the state court in the case of *Hardy v. Hartman* 65 Miss. 504, and in the case of *Becker Vs. Columbia Bank*, 112 Miss. 819, and in the case of *Edward Hines Yellow Pine Trustees Vs. State Ex. Rel. Moore*, 134 Miss. 533, 534, holding that a patent issued to the Pearl River Improvement & Navigation Company under the Act of the Mississippi legislature approved April 8, 1871, is void because the bond required by the statute was never executed, and fixing a rule of real property governing all titles claimed through patents issued to the Pearl River Improvement & Naviga-

tion Company under said statute; and (b) whether the Federal Courts will also follow the rule announced by the Supreme Court of Mississippi in the case of Tynes Vs. Southern Pine Company 100 Miss. 129, holding that a patent issued to the Pearl River Improvement & Navigation Company under Act of April 8, 1871, for lands not situated on Pearl River is void because issued in violation of Section 6 Article 8, of the constitution of Mississippi of 1868 (Ratified December 1, 1869).

**(a) RULE APPLIED IN HARDY VS. HARTMAN, 65
MISSISSIPPI, 504.**

In the case of Hardy V. Hartman, Supra, the Supreme Court of Mississippi construed the act of the Mississippi Legislature approved April 8, 1871, creating the Pearl River Improvement & Navigation Company. (Mississippi Laws 1871, 482, 486.) The portion of the Legislative Act brought under review by the Court in that case was section 5 thereof which reads as follows:

"Sec. 5 Be it further enacted That said company shall expend in the improvement of said river and in the navigation thereof, ten percentum the first year, of the value of the property referred to in the preceding section, and that the whole value of said property shall be expended for the purpose specified in this charter, within five years from the passage of this act. That said company shall, within sixty days after the passage of this Act, file in the office of the Secretary of State a bond in the sum of fifty thousand dollars, with two or more good securities, who shall make oath that they are worth the penalty of the bond over and above all liabilities and exemptions, which securities shall reside in this state, to

be approved by the Governor, and upon the approval and filing of said bond, said Secretary of State shall, from time to time, as demanded by said company, make out a patent or patents for said land to said company, which patent or patents shall be signed by the Governor and countersigned by the Secretary of State, which patents shall vest fee simple of said lands in this Company: * * * *

The Court held in *Hardy v. Hartman*, *supra*, that a patent issued to the Pearl River Improvement & Navigation Company under said statute was void for the reason that it did not appear from the record that the bond required of the Pearl River Improvement & Navigation Company by said statute, under the assumed authority of which the patent was issued, had been executed. In that case a bond was introduced in evidence, which is set out in full in the reported case in 65 Miss. at page 504. The Supreme Court of Mississippi held that this bond was not the bond required by the statute; and held for that reason that a patent issued to the Pearl River Improvement & Navigation Company under the assumed authority of the statute was void.

The agreed statement of facts in the case at bar shows that there was a document purporting to be the bond required by the statute filed in the office of the Secretary of state and that this was the same bond as that under consideration in the case of *Hardy v. Hartman*, *supra*, and *Becker v. Columbia Bank*, *supra*, and in the case of *Southern Pine Company v. Hall*, 105 Fed. 84; and the agreed statement of facts further shows that the patent in the case at bar is the same patent involved in the case of *Becker v. Columbia Bank*, *supra*, and in the case of *Southern Pine Company v. Hall*, *supra*.

In the case of *Becker v. Columbia Bank*, *supra*, the Supreme Court of Mississippi held that the patent issued

to the Pearl River Improvement & Navigation Company was void for the reason that the bond required by the statute was never executed; and the court further held that the rule applied in the case of **Hardy v. Hartman, supra**, was a rule of property governing all titles claimed under patents issued to Pearl River Improvement & Navigation Company under said statute. In this Becker case the court say:

“Without setting out the pleadings, the conflicting chains of title, or evidence in full, we think it well to state that the disposition of this case is controlled by **Hardy v. Hartman**, 65 Miss. 505 4 South 545 The decision of this court in the Hardy-Hartman case has been the subject of attack more than once, and this court has uniformly declined to overrule that case. The decision established a rule of property, which should not now be disturbed. The decision was rendered by eminent jurists, who stated that:

‘The proposition is too plain for argument that, if a patent issued for the land without these conditions being complied with, it was void.’

The condition referred to by the court was that condition expressly provided by the statute that:

‘Upon the approval and filing of said bond, said secretary of state shall, from time to time as demanded by said company, make out a patent or patents.’

The bond required, according to the previous decision of our court, was not executed. It is contended by counsel for ap-

pellant that a different construction has been placed upon this act by the Federal Courts, and that there should be uniformity of decision. It is elementary that this court, above all others, has the right to construe the statutes of our own state.

It is contended by counsel that the record in this case does not show noncompliance in the filing of the bond required. The record does show an agreement dictated upon the trial of the case that the bond executed was the same bond shown by the record in the Hardy-Hartman Case. It is true that the record in this case shows the issuance of a patent to the Pearl River Improvement & Navigation Company. The title thus attempted to be conveyed by this patent is now held by the appellants, and, if the bond required was not given, this title in the hands of appellants cannot be upheld. This is a vital defect in appellants' case, which requires an affirmance of the decree entered by the trial court."

In the case of **Edward Hines Yellow Pine Trustees v. State Ex. Rel. Moore** 134, Miss, 533, 534, the supreme court of Mississippi, in an opinion on suggestion of error, again held the rule applied in **Hardy v. Hartman, supra**, to be a rule of property which controls all titles claimed under patents issued to Pearl River Improvement & Navigation Company under said statute. In this case the court say:

"Two propositions are particularly stressed on the suggestion of error:

1. That in applying the rule that a 'patent' to public land carries with it the presumption that all of the legal prerequi-

sites necessary to its issuance have been 'comlied with,' in the absense from the record of the list of lands required by Section 7 Chapter 34, Laws of 1852, to be furnished by the Secretary of State to the Commissioners of the Southern District of Pearl River, we have necessarily overruled **Hardy v. Hartman** 65 Miss. 509, 4 South. 545, wherein it was held that a patent issued to the Pearl River Improvement & Navigation Company was void for the reason that it did not appear from the record that the bond required of the Pearl River Improvement & Navigation Company by the statute under which the patent was issued had been executed. * * * * *

We are not here concerned with the correctness of the decision in **Hardy v. Hartma, supra**, and the rule therein applied. whether correct or not, to titles derived through patents issued to the Pearl River Improvement & Navigation Company has become a rule of property and will not be now departed from.

The question of the validity of the patent to the Pearl River Improvement & Navigation Company, issued under this statute, appears to have been before the Mississippi supreme court a number of times after the decision of the court in **Hardy v. Hartman, supra**, and before the decision in **Becker v. Columbia Bank, supra**. This is indicated by the following quotation taken from the opinion of the court in the last cited case:

"The decision of this court in the **Hardy-Hartman** case has been the subject of attack more than once, and this court has uniformly declined to overrule that case."

This question was before the supreme court of Mississippi again so recently as February 4, 1924, in the case of Edward Hines Yellow Pine Trustees V. F. C. Martin, reported in Vol. 99 page 825 of Southern Reporter but not reported in the official state reports, wherein the court held, by affirming *per curiam* the judgment of the lower court, that the said patent is void. The appellants in that case are the same persons as the petitioners in the case at bar, and the appellee in that case is one of the persons who is a respondent in the case at bar.

These decisions of the supreme court of Mississippi, extending over a period of nearly forty years without the discordant note of a dissenting opinion, have set at rest forever, in the state court, the question that a patent issued to the Pearl River Improvement & Navigation Company under this statute (Act of Mississippi Legislature approved April 8, 1871) is void because the bond required by that statute was never executed. These decisions, extending over this long period of years, have conclusively established a rule of real property governing all titles claimed through patent issued to the Pearl River Improvement & Navigation Company under this statute.

If the case at bar were before the supreme court of Mississippi, there can be no question but that the state court would follow these former decisions establishing this rule of property, and would hold that the title of complainants derived through the patent to the Pearl River Improvement & Navigation Company is void.

Having thus shown the construction placed upon this statute by the Supreme Court of Mississippi, and the rule of property established by the decisions of that court governing these Pearl River Improvement & Navigation Company titles, we now come to the precise question for decision in the case at bar, which is whether the Federal Court will follow in this case this unbroken line of decisions by the Supreme Court of Mississippi dating back to 1888, construing this statute and establishing this rule of property.

**THE FEDERAL COURTS FOLLOW AND APPLY
THE LAWS AND RULES OF REAL PROPERTY ESTAB-
LISHED BY THE COURTS OF THE STATE WHERE
THE LAND IS SITUATED.**

There is an unbroken line of decisions by the Supreme Court of the United States, beginning with the early decisions of that court, establishing a rule which has uniformly governed the Federal Courts, that where any principle of law, establishing a rule of property, has been settled in the state courts, the same rule will be applied by the Federal Courts that would be applied by the State Courts, whether the decisions of the State Court establishing a rule of property are grounded on the construction of the statutes of the State or form a part of the unwritten law of the State. This rule has been reaffirmed and applied by the Supreme Court of the United States time and time again, and especially in the following cases:

Jackson Ex. v. Dem. St. John v. Chew 12 Wheat. 153, (6 L. ed. 583);

Suydam v. Williamson 24 How. 427 (16 L. ed. 742);

Walker v. State Commissioners 17 Wall. 648, (21 L. ed. 744);

Green v. Neal 6 Peters 291 (8 L. Ed. 402)

William v. Kirkland, 13 Wall, 306

Barrett v. Holmes, 12 Otto 651 (26 L. ed. 291);

Wraburton v. White 176 U. S. 496 (44 L. ed. 559);

League v. Egery, 24 How. 264 (16 L. ed 655);

Bucher v. Cheshire R. Co. 125 U. S. 555,

(31 L. ed. 795) ;

Burgess v. Seligman, 107 U. S. 20 (27 L. ed. 365)

Beauregard v. New Orleans, 18 How. 497, (15 L. ed. 470) ;

Smith Purefier Co. v. McGroarty, 136 U. S. 237 (34 L. ed. 346) ;

Guffey v. Smith, 237 U. S. 101 (59 L. ed.) 856) ;

Gormerly v. Clark, 134 U. S. 338 (33 L. ed. 909) ;

Waring v. Jackson, 1 Peters 570 (7 L. ed. 266) ;

Hinde v. Vattier, 5 Peters 398 (8 L. ed. 168)

Elmendorf v. Taylor, 10 Wheat. 152 (6 L. ed 289) ;

Christy v. Pridgeon, 4 Wall. 196 (18 L. ed. 322) ;

United States of America Emigrant Co. v. Adams County 100 U. S. 61 (25 L. ed. 563) ;

Heath v. Wallace 138 U. S. 573, (34 L. ed. 1063)

In the case of **Jackson, Ex. Dem. St. John vs. Chew**, *supra*, the Supreme Court of the United States say :

“The inquiry is very much narrowed by applying the rule which has uniformly governed this Court, that where any principle of law, establishing a rule of real property, has been settled in the State Courts, the same rule will be applied by this Court that would be applied by the State tribunal.

"This is a principle so obviously just, and so indispensably necessary under our system of government, that it cannot be lost sight of.

"After such a settled course of decisions, and two of them in the highest court of law in the State, upon the very clause in the will now under consideration, deciding that Joseph Eden did not take an estate tail, a contrary decision by this Court would present a conflict between the State Courts and those of the United States, productive of incalculable mischief. If, after such an uninterrupted series of decisions for twenty years, this question is not at rest in New York, it is difficult to say when any question can be so considered. And it will be seen by reference to the decisions of this court, that to establish the contrary doctrine here, would be repugnant to the principles which have always governed this Court in like cases.

"It has been urged, however, at the bar, that this Court applies this principle only to state constructions of their own statutes. It is true, that many of the cases in which this Court has deemed itself bound to conform to state decisions, have arisen on the construction of statutes. But the same rule has been extended to other cases; and there can be no good reason assigned why it should not be, when it is applying settled rules of real property. This Court adopts the state decisions, because they settle the law applicable to the case; and the reasons assigned for this course, apply as well to rules of construction growing out of the common law, as the statute law of

the state when applied to the title of lands. And such a course is indispensable, in order to preserve uniformity, otherwise the peculiar constitution of the judicial tribunals of the states and of the United States, would be productive of the greatest mischief and confusion. * * * * *

“And whether these rules of land titles grow out of the statutes of a state, or principles of the common law adopted and applied to such titles can make no difference. There is the same necessity and fitness in preserving uniformity of decision in the one case as in the other. So, also, in the cases of **Polk’s Lessee v. Wendal**, 9 Cranch, 98, and **Thatcher v. Powell**, 6 Wheat. Rep. 127, the construction of state statutes respecting real property was under consideration; and the Courts say they will adopt, and be governed by, the state construction, when that is settled, and can be ascertained, especially where the title to lands is in question.”
* * * * *

“After such a series of adjudications for such a length of time, in the state courts, upon the very point now before us, and relating to a rule of landed property in that state, we do not feel ourselves at liberty to treat it as an open question.”

In the case of **Walker v. State Commissioners** *supra*, the Supreme Court of the United States say:

“It is not for us to express any opinion as to what would be our construction of the act had the Supreme Court of the State never spoken on the subject. In the con-

struction of the statutes of a state, and especially those affecting titles to real property, where no Federal question arises this court follows the adjudications of the highest court of the state. Its interpretation is accepted as the true interpretation, whatever may be our opinion of its original soundness. It becomes a part of the statute, as much so as if incorporated into the body of it, and in following the statute as thus interpreted we only apply to a local question the law of the place. As has been often remarked, infinite mischief would result if, in construing state statutes affecting titles to real property, where no Federal question is involved, a different rule were adopted by the Federal tribunal from that of the state courts."

The case of *Suydam v. Williamson*, *supra*, is a case strigingly similar to the case at bar. In that case it appears that the Federal Court had held to be invalid title to certain lands in the state of New York, which decision was in conflict with a prior decision of the Courts of New York. Afterwards, the New York Courts continued to follow their own decision and expressly refused to follow the conflicting decision of the United States Supreme Court, just as the Supreme Court of Mississippi refused in *Becker v. Columbia Bank* *supra*, to follow the United States Circuit Court of Appeals in the case of *Southern Pine Co., v. Hall*, *supra*, and followed their own decision in the case of *Hardy v. Hartman*, *supra*. And in this situation the Supreme Court of the United States changed its former decision and followed the New York Courts.

In this case of *Suydam v. Williamson*, *supra*, the Supreme Court of the United States say:

"And the question is now presented to

this court, whether they should adhere to their own opinion as expressed in the cases of 8 Howard, or acknowledge the authority of the Courts of New York to settle finally the contest upon this title. * * * * *

"In the case of **Arguello v. United States**, 18 How. 539, this court determined that the colonization regulations of Mexico, of 1824 and 1828, did not prohibit the settlement of the littoral or coast leagues by natives, under the authority of the governor of California, and without the consent of the Central government in Mexico. The same question was presented in the case of **League v. Eger**, 24 How. 264, at this term, from the District Court of the United States in Texas, in reference to the coast leagues in that State. This Court found a contrary opinion had prevailed in the courts of that state, and had become a rule of property there, and without re-examining their own opinion or making any attempt to account for or to reconcile the difference, without any hesitation applied the rule adopted in Texas to the determination of controversies existing there.

"The cases reported in 8 Howard, referred to, came before this Court upon a division of opinion between the experienced judges of the Circuit Court of the Southern District of New York. The authority of *Clark v. Surley* was thus impugned in that tribunal. The decision in the court of errors was far from being unanimous; nor was the dissent in that tribunal feeble or equivocal.

"The majority of this court were con-

vinced that the question might be examined anew, and that their answers were accordant with the opinion of the minority in the court of errors. But in the present case there is no room for doubt as to what the settled opinion of the courts of New York is in reference to this title and, therefore, no occasion for any hesitation concerning the obligation we have to perform. The Circuit Court decided adversely to the defendant.

"Its judgment is reversed and the cause remanded for further proceedings."
(Italics ours)

In the case of **Green v. Neal**, *supra*, the Supreme Court of the United States over-ruled two of its own decisions in order to conform its decision in this Green case to the decisions of the state court fixing and establishing a rule of property. In over-ruling its former decisions, the Supreme Court of the United States say:

"Here is a judicial conflict, arising from two rules of property in the same state, and the consequences are not only deeply injurious to the citizens of the state, but calculated to engender lasting discontents. It is therefore essential to the interests of the country, and to the harmony of the judicial action of the Federal and State governments, that there should be but one rule of property in a state.

"As it appears to this Court that the construction of the statute of limitations is now well settled, differently from what was supposed to be the rule at the time this Court decided the case of **Patton's Lessee v. Easton**, and the case of **Powell's Lessee**

v. Green; and as the instructions of the Circuit Court were governed by these decisions and not by the settled law of the state, the judgment must be reversed, and the cause remanded for further proceedings."

In the case of **William v. Kirkland**, *supra*, the Supreme Court of the United States say:

"This construction of a state of law upon a question affecting the titles to real property in the State by its highest court, is binding upon the Federal Court."

In the case of **Barrett v. Holmes**, *supra* the Supreme Court of the United States say:

"By these decisions the Supreme Court of the state has established a rule of property in the State of Iowa, which is binding on this and other courts of the United States."

In the case of **League v. Egery**, *supra*, the Supreme Court of the United States say:

"In accordance with well established principles in this Court, we accept this uniform and stable body of judicial decisions from the Court of last resort of the state in which the property is situated, and in which the transactions which form the subject of this litigation took place, as conclusive testimony of the rule of action prescribed by the authorities of the state, as applicable to their interpretation and adjustment. We do not inquire whether a more suitable rule might not have been adopted, nor whether the arguments which lead to its adoption were forcible or just. We receive the de-

cisions, having the character that is mentioned in the extract we have made from the opinion of the Supreme Court of Texas, as having a binding force almost equivalent to positive law. Such being our conclusion in respect to this grant, we must sanction the judgment of the District Court that denies to it validity."

In the case of **Bucher v. Chesire R. Co.**, *supra*, the Supreme Court of the United States say:

"It is also well settled that where a course of decisions, whether founded upon statutes or not, have become rules of property as laid down by the highest courts of the state, by which is meant those rules governing the descent, transfer, or sale of property, and the rules which affect the title and possession thereto, are to be treated as laws of the state by the Federal Court."

In the case of **Burgess v. Seligman**, *supra*, (cited and relied upon by counsel for Petitioners as authority) the Supreme Court of the United States say:

"The existence of two co-ordinate jurisdictions in the same territory is peculiar, and the results would be anomalous and inconvenient but for the exercise of mutual respect and deference. Since the ordinary administration of the law is carried on by the state courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the state, and have all the effects of law, and which it would be wrong to disturb... This is especially true with regard to the law of real estate and the construction of state

Constitutions and statutes... Such established rules are always regarded by the Federal Courts, no less than by the State Courts themselves, as authoritative declarations of what the law is."

(Italics ours)

In the case of **Warburton v. White** *supra*, in answer to the contention there made that because the rights under the contract had been acquired prior to the decision of the State Court fixing the rule of property, that therefore the United States Court could and ought to exercise its independent judgment and not feel bound by the rule fixed by the State Court, the Supreme Court of the United States, in disposing of this contention, say:

"The rule is subject to a limitation which is, that where state decisions have interpreted state laws governing real property or controlling relations which are essentially of a domestic and state nature, in other words, where the state decisions called upon to interpret the state law will, establish a rule of property, this court when if it is possible to do so, in the discharge of its duty, adopt and follow the settled rule of construction affixed by the state court of last resort to the statutes of the state, and thus conform to the rule of property within the state. It is undoubted that this rule obtains, even although the decisions of the state court, from which the rule of property arises, may have been for the first time announced subsequent to the period when a particular contract was entered into. **Burgess v. Seligman**, 107 U. S. 20, 34, 27 L. ed. 359, 365, 2 Sup Ct. Rept. 10; **Miller v. Ammon**, 145 U. S. 423, 36 L. ed. 761. 12 Sup Ct. Rep. 84."

After a careful search, we have been unable to find a single case holding contrary to or even qualifying the rule that the Federal Courts will always conform their decisions to those of the State Courts, and will follow the decisions of the State Courts, where those courts have, by a settled course of decisions, established rules of property affecting land titles. We have carefully examined all of the cases cited by counsel for Petitioners, and none of those cases conflict with or qualify this rule. Such of those cases cited by counsel for Petitioners as touch upon or speak of this rule expressly recognize it.

Counsel for petitioners cited a number of cases, including *Burgess v. Seligman*, 107 U. S. 20, and *Kuhn v. Fairmount Coal Co.* 215 U. S. 349, in support of his contention that the Federal Courts should exercise their independent judgment in the case at bar and refuse to follow the settled course of decisions of the Supreme Court of Mississippi construing this statute and holding that the Pearl River Improvement & Navigation Company title are void, and establishing a rule of real property governing all titles derived through patents issued to said company.

We have carefully examined all of these authorities cited by counsel, and none of these cases support his contention. Nor do they conflict with the well established rule that the Federal Courts will conform their decisions to the decisions of the State Court establishing rules of real property, especially in a case, such as the case at bar, where the title to the property is dependent upon a state statute, the construction of which by the state court has established the rule of property.

In this connection, we direct the attention of the court to the fact that none of these cases cited by counsel was concerning real property except *Kuhn V. Fairmount Coal Co.*, and that case did not involve the title to land, and the contract there involved was not dependent for its validity upon the construction of a state statute by the

Court. It is to be further observed that in the case of *Kuhn v. Fairmount Coal Co.*, the majority opinion held that if there had been a settled course of decisions by the State Court on the subject they would have felt constrained to follow the State decisions; and that, in a vigorous dissenting opinion in that case by **Mr. Justice Holmes**, in which **Mr. Justice White** and **Mr. Justice McKennon** concurred, it was stoutly contended that even one decision by the State Court in that kind of case, by nature and necessity peculiarly local, ought to bind the court to follow the decision of the state court and to refuse to exercise their independent judgment.

But counsel for petitioners contend that this Court should refuse to follow the decisions of the Supreme Court of Mississippi, beginning with *Hardy vs. Hartman*, *supra*, decided in 1888, declaring this rule of property with reference to these Pearl River Improvement & Navigation Company titles; and counsel say that this Court ought, instead to follow the decision of the Circuit Court of Appeals in the case of **Southern Pine Company v. Hall**, 105 Fed. 84, rendered in 1900, which counsel for petitioners says established a rule of property governing said titles. We do not consider the case of **Southern Pine Company v. Hall**, *supra*, as being in conflict with the unbroken line of decisions of the Supreme Court of Mississippi establishing as a rule of property that all titles claimed under patents issued to Pearl River Improvement & Navigation Company under the aforesaid statute are void for the reason that this Hall case was tried on an agreed statement of facts, which submitted to the Federal Court and invited its **independent judgment** upon the question of whether the instrument purporting to be the bond of the Pearl River Improvement & Navigation Company was the bond required by the statute, and whether title passed by the issuance of the patent to the Pearl River Improvement & Navigation Company. This is shown by the following quotation from the agreed statement of facts set out at page 86 of 105 Federal Reporter.

"the purpose being to submit to the Court the question whether or not, under all the facts above recited, and the law in reference thereto said bond was the bond required by said act, whether title passed by the issuance of said patent."

From this it is seen that the parties not only agreed that the Federal Court should exercise its independent judgment in that case, but invited the Court to exercise its independent judgment and disregard the decisions of the State Court. In other words, instead of invoking and relying upon the case of **Hardy v. Hartman** as a rule of property, the complainant in this Hall case submitted to the Federal Court the question of the validity of the bond and the patent, to be decided upon the independent judgment of that Court.

But, if the case of **Southern Pine Company v. Hall**, *supra*, could be considered as being in conflict with this settled line of decisions of the State Court, we respectfully submit, under the authority of **Green v. Neal**, 6 Peters 291, (8 L. ed. 402) and **Suydam v. Williamson**, 24 How 427 (16 L. ed. 742), and **Wade v. Travis County**, 174 U. S. 508 (43 L. ed. 1064), that it was the duty of the Circuit Court of Appeals to disregard its former decision in the case of **Southern Pine Company v. Hall**, *supra*, and conform its decision in the case at bar to the decisions of the Supreme Court of Mississippi in **Hardy v. Hartman**, *supra*, and in **Becker v. Columbia Bank**, *supra*, and in **Edward Hines Yellow Pine Trustees v. State, ex rel. Moore** *supra*, establishing this rule of property.

The most that counsel for petitioners claims for the case of **Southern Pine Company v. Hall**, *supra*, is that the Federal Court decided therein that the bond in question was the bond required by the statute, and in consequence of such holding that the court reached the conclusion that the patent was valid. Counsel contends, however, that the said decision established a rule of property govern-

ing the title to the lands. On the other hand, Counsel freely admits that in the case of **Hardy v. Hartman, supra**, the State Court decided that the same bond was not the bond required by the statute, and in consequence of such holding that the court reached the conclusion that the patent was void. Notwithstanding this, counsel still contends that the State Court decision did not establish a rule of property governing the title to said lands, although the State Court decision was on precisely the same question as that of the Federal Court and was more than twelve years prior in point of time to that of the Federal Court. We fail to see the logic of this argument. To contend that the Federal Court decision established a rule of property is to concede that the State Court decision established a rule of property. If it is conceded that the State Court decision established a rule of property governing the title to these lands in the case of **Hardy v. Hartman supra**, in 1888; then it follows, necessarily, that the Federal Court could not establish a different rule of property governing the title to these same lands twelve years later in the case of **Southern Pine Company v. Hall, supra**. For this additional reason we submit that the Circuit Court of Appeals did not commit error in the case at bar when it disregarded the decision in **Southern Pine Company v. Hall, supra**, and followed the rule of property established by the State Court in **Hardy v. Hartman, supra**.

The statement is made in the brief of counsel for petitioners that no patent was shown to have issued to the Pearl River Improvement & Navigation Company in the case of **Hardy v. Hartman, supra**. We desire to take issue with counsel on this statement and call the attention of the court to the following statement of the facts contained in the report of that case appearing in 65 Miss. 505, which statement of facts is as follows:

"The plaintiff, in support of his claim of title, put in evidence a patent from the State to himself, dated October 1, 1885, and

conveying the land sued for.

And the defendants, in defence of their claim of title, adduced in evidence, as the bill of exceptions recites, 'A certified copy taken from the records of the office of the Swamp Land Commissioner of the State, showing that the lands in controversy were sold to the Pearl River Improvement & Navigation Company on the 8th day of April 1871, by an act approved April 8, 1871, and that a patent issued to said company for the lands in controversy, June 27th, 1871, which copy was in due and regular form and properly authenticated and certified.' The defendants also introduced in evidence a certified copy of the list of lands in Lincoln County sold to the State for the taxes of 1874, and a certified copy of the list of lands in that county sold to the State on the 10th of May, 1875, under the abatement Act; and each of said lists embraced the land in controversy. Then the defendants introduced in evidence a deed from the Auditor of Public Accounts, dated March 13th., 1877, and conveying this land to them."

The certified copy taken from the records of the office of the Swamp Land Commissioner of the State referred to above, and showing that the land in that case had been patented to Pearl River Improvement & Navigation Company on June 27, 1871, was introduced in evidence under Section 1625 Revised Code of Mississippi 1880, which was in force at the time of the decision in the Hardy-Hartman case. Said Code Section reads as follows:

"Copies from the Books of entries of land, kept in any land office in the state, or in the office of the secretary of state, or other public officer, when certified by the officer having charge thereof, shall be admissible in evidence in the same manner and with the same effect as the original certificate of entry."

The Supreme Court of Mississippi in the case of *Bodie v. Pardee*, 74 Miss. 13, (20 South. 1), held that under this Section certified copies from the books of entries in the office of the Land Commissioner showing the issuance of patents are original evidence and admissible in the same manner and with the same effect as the original patent.

From the foregoing it therefore conclusively appears that proof was made in that case that a patent was issued to the Pearl River Improvement & Navigation Company. And from the foregoing it further appears that the theory of the defendant Hartman in that case was that title to said land had passed out of the State of Mississippi to the Pearl River Improvement & Navigation Company by said patent and that by the sale of said land to the State of Mississippi for taxes in the year 1875, and by the sale of said land by the State to him under the auditor's deed of March 13, 1877, he was the owner thereof. So that, it not only appears that a patent was shown to have issued to the Pearl River Improvement & Navigation Company in that case, but it conclusively appears from the opinion in that case that the court held the title claimed by the defendant Hartman under the Pearl River Improvement & Navigation Company patent was void because the bond filed in the office of the Secretary of State was not the bond of the Pearl River Improvement & Navigation Company and did not meet the requirements of the Statute.

It will also be noted that the court in the Hardy-Hartman case held that the Act of 1871 did not of itself divest the state of title to the land; but, on the contrary, said Act expressly provided that the patents to the lands should not be issued by the State to the Company until the Company should file in the office of the secretary of state a bond, with security, in the sum of \$50,000.00, and that the bond should be approved by the governor. The Court further held in that case that the giving of the bond required by the statute was a condition precedent, and that a patent issued without the company complying with this condition precedent could pass no title to the Company.

In this connection we call the attention of the court to paragraph 12 of the agreed statement of facts in the case at bar, (R. 70), wherein it is agreed that there is neither any bond nor any evidence of the filing of any bond required by the Act of April 8, 1871, on file in the office of secretary of state; but that there was at one time a bond on file in the office of the secretary of state purporting to be the bond required by Act of 1871, which is the same bond referred to and set out in the case of Hardy v. Hartman, 65 Miss. 505, and also referred to in Becker v. Columbia Bank, and also referred to in Southern Pine Company v. Hall. We also call the attention of the court to paragraph 11 of the agreed statement of facts (R. 70) wherein it is agreed that the patent to Pearl River Improvement & Navigation Company offered in evidence by complaint in this case is the same patent which was involved in the case of Becker v. Columbia Bank, *supra*.

We therefore respectfully submit that since the bond before the court in this case is the indetical bond that was before the court in Hardy v. Hartman and Becker v. Columbia Bank; and since the Supreme Court of the State of Mississippi held in those two cases that patents

issued to the Pearl River Improvement & Navigation Company were void because said bond was not the bond required by the statute; and since the Supreme Court of the State of Mississippi held in *Becker v. Columbia Bank*, supra, and in *Edward Hines Yellow Pine Trustees v. State Ex. Rel. Moore*, supra, that the decision in the case of *Hardy v. Hartman*, established a rule of property governing all such titles; we respectfully submit that the title of the petitioner in this case is identical with the title of the defendant Hartman in the case of *Hardy v. Hartman*, supra, and with the title of *Becker* in the case of *Becker v. Columbia Bank*, supra, and is controlled by the rule of property which was established by the Supreme Court of the State of Mississippi in those cases.

Counsel for petitioner makes the following statement in his brief: "It will further appear by reference to the Hall case supra, and the deraignment of title that Olivia B. Hall owned the land at the time the Hall case was decided by the Circuit Court of Appeals. The bill of complaint charges that she owned it, and that it was by inadvertance that the lands were omitted from the bill of complaint in that suit." From this statement counsel makes the argument that the decision in the case of *Southern Pine Company v. Hall*, supra, validated the title of Olivia B. Hall to the land involved in the case at bar; and that it was upon the faith and credit of the decision of the Circuit Court of Appeals in the Hall case that petitioners purchased the land here involved. By reference to the four bills filed by petitioners in the case at bar, (R. 2, 9, 16, 23) is seen the following allegations with reference to the ownership of the land involved herein: "Thereafter on July 23, 1900, the said Olivia B. Hall by quitclaim deed conveyed said land to Charlotte H. Eastman, the said deed being in conveyance of a theretofore executed but unrecorded deed from the said Israel Hall to Charlotte H. Eastman, wife of Sidney C. Eastman, said deed being executed about the year 1887, and the deed of con-

veyance from the said Olivia B. Hall to Charlotte H. Eastman being found of record in Book 12 pp. 222, record of Deeds, Pearl River County, State of Mississippi."

From this allegation, which is an admission by petitioners on the record in this case it appears that Olivia B. Hall never owned the Pearl River Improvement & Navigation Company title to the land involved in this case; that Charlotte H. Eastman acquired this title in 1887, and owned it at the time the decision was rendered in the case of Southern Pine Company v. Hall, *supra*, which decision was rendered by the District Court February 20, 1899, and affirmed by the Circuit Court of Appeals for the Fifth Circuit November 20, 1900.

We also call the attention of the court to the answers of the several defendants denying that the land in that suit was left out of the case of Southern Pine Company v. Hall by mistake (R. 31, 41, 50, 59); and to the fact that no evidence was offered by the complainant to prove that said land was left out of the Hall case by mistake. We also call the attention of the court to the further fact that in the Hall case Southern Pine Company was the complainant and Olivia B. Hall the defendant. It is apparent therefore that if the lands involved in this suit was left out of that suit it was left out by Southern Pine Company, complainant in that suit and not by the defendant Hall. So that it also appears from the record in the case at bar that the land involved in this suit was not left out of the Hall case by Olivia B. Hall, defendant in that case, through mistake.

(b) RULE ANNOUNCED IN *TYNES V. SOUTHERN PINE COMPANY*, 100 MISS. 129, ESTABLISHED A RULE OF PROPERTY.

In the case of *Tynes v. Southern Pine Company*, 100 Miss. 129, the Supreme Court of Mississippi pass-

ed upon a patent issued to the Pearl River Improvement & Navigation Company under this same Act of April 8 1871, (Mississippi Laws 1871, 482, 486), and brought under review Section 6 Article 8, of the Constitution of Mississippi of 1868, (Ratified December 1, 1869), which provides: That there shall be established a common school fund, which shall consist of the proceeds of the lands now belonging to the State, heretofore granted by the United States, and of the land known as 'swamp lands,' except the land lying and situated on Pearl River, in the Counties of Hancock, Marion, Lawrence, Simpson and Copiah," and held that the patent was void as to the lands involved in that case because they were not lands "lying and situated on **Pearl River.**" In passing upon this patent in that case the court held that there the Legislature was without authority to authorize the issuance of a patent to the Pearl River Improvement & Navigation Company (which was a donation) for any lands which were not "lying and situated on **Pearl River,**" for the reason that Section 6 Article 8, Constitution of 1868 (ratified December 1, 1869) had set aside to be sold for school purposes all swamp land "except the swamp lands lying and situated on **Pear River** in the Counties of Hancosk, Marion, Lawrence, Simpson and Copiah."

In the case at bar, each defendant averred in his answer that the lands here involved are neither on nor near Pearl River, but are remotely situated therefrom, (R. 31, 45, 54, 63); and by the agreed statement of facts (R. 68 paragraph 7) it is admitted that the lands are not in the Pearl River watershed and not affected by the water of Pearl River, and are located about twenty miles East of Pearl River and on Wolf River, an independent river system from that of **Pearl River.**

We respectfully submit that in this state of the pleadings and proof, and with this admission contained in the agreed statement of facts, petitioners in the case at bar

brought their title clearly within the condemnation of this Tynes case; and respondents are entitled to and do rely on that case as a rule of property established by the State Court, in the construction by that Court of the Constitution of the State of Mississippi.

PETITIONERS NOT IN POSITION TO RELY UPON
CHAPTER 114 OF LAWS OF MISSISSIPPI OF 1875 AS
RATIFYING THEIR TITLE.

It is claimed by petitioners that this Court should review and reverse the decision of the Circuit Court of Appeals because they say now, and for the first time in this Court, that their title to the lands involved was approved and ratified by the Legislature of the State of Mississippi by an Act, Chapter 114 of the Laws of Mississippi, approved April 19, 1873. This Act is set out in full in appendix "C" to the petition for certiorari herein, at pages 35, 36 and 37 thereof.

This is a private Act of the Legislature. It was not pleaded, proven nor relied on in the trial Court; it was not raised nor relied on before the Circuit Court of Appeals; and it is first pleaded, proven, raised and relied on in this court, on petition for certiorari and as a ground for asking this Court to review the case on certiorari and reverse the same.

Manifestly petitioners are seeking to have this Court take judicial notice of this private Act of the Legislature pleaded and relied on for the first time by them in their petition for certiorari. This Court is a Court of review. It will not permit litigants to frame their pleadings and offer their proof for the first time on an application for certiorari to review the case, or upon a review of the case on certiorari; neither will the Court make petitioners' case other than they made it in the District Court by tak-

ing judicial notice of a private Act of the Legislature which petitioners did not choose to rely on in their pleadings nor to prove on the hearing. If this Court could or would in any case take judicial notice of a private Act of the Legislature of a State, the pleadings of the party relying upon it would have to present the same before resort would be had to judicial knowledge by the Court. *Mining Co. v. McFadden*, 180 U. S. 533, 45 L. Ed. 656; *Oregon S. L. & W. N. R. Co. v. Skottowe*, 162 U. S. 490, 40 L. Ed. 1048. In *Mining Co. v. McFadden*, *supra*, this Court said:

“But the Circuit Court would not make plaintiff’s case other than they make it by taking judicial notice of facts which they did not choose to rely on in their pleadings, The averment brought no controversy in this regard into count, in respect of which resort might be had to judicial knowledge. *Thayer Treatise on Evidence*, ch. VII; *Oregon S. L. & W. N. R. Co., v. Skottowe*, 162 U. S. 490, 40 L. Ed. 1048, 16 Sup. Ct. Rep. 869.”

In this connection we also call to the attention of the Court that by the agreed statement of facts (R. 67 paragraph 2) petitioners have agreed that the validity of their title is entirely dependent upon the patent issued to Pearl River Improvement & Navigation Company under the Act of April 8, 1871, set out as appendix “B” to the petition for certiorari; and by paragraph 14 of the agreed statement of facts (R. 70) petitioners agree that the pleadings and the agreed statement of facts constitutes the record in this case.

We respectfully submit, therefore, that we are not called upon now to meet an issue raised by petitioners for the first time in this Court on their application for certiorari, an issue which they did not choose to make and

rely upon in the District Court and in the Circuit Court of Appeals.

THE ACT OF 1873 DID NOT DEAL WITH TWO CLASSES OF LANDS AND DID NOT RATIFY TITLES TO ANY LANDS PATENTED TO PEARL RIVER IMPROVEMENT & NAVIGATION COMPANY, THE PAYMENT OF TWENTY-FIVE CENTS PER ACRE BEING A CONDITION PRECEDENT TO SUCH RATIFICATION.

As we have heretofore stated we are not called upon and should not be required now to meet an issue raised by petitioners for the first time in this Court on their application for certiorari. But since petitioners have raised this issue and presented it with much vigor in their brief, in order that we may not be placed in the attitude of admitting that petitioners' statements on this issue are correct, we presume that it is proper for us to make reply thereto, even though so to do may require us to follow counsel for petitioners out of the record.

Petitioners say the said Act of 1873, set out as Exhibit "C" to petition for certiorari herein, dealt with two classes of land designated by petitioners as follows: (a) those lands at that time still owned by the Pearl River Improvement & Navigation Co., and (b) those lands which at that time had been deeded away by the company. After having said this, counsel for petitioners further says that the case of *Hardy v. Hartman supra*, and the case of *Becker v. Columbia Bank supra*, dealt with lands designated by counsel as class (a), and that the Supreme Court of Mississippi has never had before it or passed upon the question of the validity of the title to lands conveyed by the Pearl River Improvement & Navigation Company prior to the said Act of 1873 and falling within what counsel designates as class (b) of the lands. Counsel then says that the case of *Southern Pine Company v. Hall, supra*, was dealing with the class of lands falling within the

class designated by him as class (b); and that the lands involved in this suit also fall within the class designated by him as class (b).

There is nothing in the record in the case at bar, and there is nothing contained in the cases of *Hardy v. Hartman*, *supra*, and *Becker v. Columbia Bank*, *supra*, as they appear reported in the official State Reports, to warrant the statement by counsel for petitioners that the Supreme Court of Mississippi, in those cases, was dealing with lands that had not been conveyed by Pearl River Improvement & Navigation Company prior to the enactment of said Act of 1873. Not only this, but there is nothing in the report of said cases and there is nothing in the record in the case at bar from which any such conclusion can be drawn. To the contrary, as we shall now undertake to point out to the Court, the Pearl River Improvement & Navigation Company owned none of the lands patented to it by the State to fall within the class of lands designated by counsel as class (a) at the time of the enactment of said Act of 1873, but said company had sold to M. S. Baldwin in 1872, all lands which were patented to it by the state, and that the lands in both the cases of *Hardy v. Hartman*, *supra*, and *Becker v. Columbia Bank*, *supra*, were lands which had been sold by the company prior to the enactment of said Act of 1873.

In this connection, we direct the attention of the Court to the agreed statement of facts in the case at bar (R. 70, paragraph 11) wherein it is agreed that the patent to the Pearl River Improvement & Navigation Company offered in evidence by complainant and attached to the agreed statement of facts is the **same patent** which was involved in the case of **Southern Pine Company v. Hall**, *supra*, and is the **same patent** which was involved in the case of **Becker v. Columbia Bank**, *supra*. We direct the attention of the Court to the fact that this patent is the patent dated **June 27, 1871**. (R. 71, 72). We direct the

attention of the Court to the case of **Bradford v. Hall**, 86 Fed. 802, 803, wherein Judge **Hill** of the District Court, who presided in that case, made the following statement in the course of the opinion with reference to said patent of **June 27, 1871**, and to the disposition of the lands therein embraced:

“On the 11th day of June, 1871, and on the 27th day of June, 1871, patents were issued, signed by the governor and secretary of state, under the seal of the state, conveying, among many other lands, the lands in controversy to the Pearl River Improvement & Navigation Company and on the 21st day of November, 1872, a deed, or what purports to be such was executed by Samuel A. Vose, as the president of said navigation company, for **all** of said lands described in the two patents aforesaid, to **M. S. Baldwin**, for the recited consideration of \$11,000.”

From the foregoing quotations from **Bradford v. Hall**, supra, it appears that Pearl River Improvement & Navigation Company conveyed to **M. S. Baldwin** in **November, 1872**, and prior to the enactment of the Act of 1873, **all** of the lands embraced in the patent from the State to Pearl River Improvement & Navigation Company dated **June 27, 1871**. From the agreed statement of facts in the case at bar (R.70, paragraph 11), it appears that it is agreed in the case at bar that this **June 27, 1871**, patent is the patent which was involved in both cases of **Southern Pine Company v. Hall**, supra, and **Becker v. Columbia Bank**, supra; and that this patent is the same patent offered in evidence and relied on by petitioners in the case at bar. Now Judge **Hill** said in **Bradford v. Hall**, supra, that the navigation company conveyed to **M. S. Baldwin** in **November, 1872**, **all** of the lands described in said patent of **June 27, 1871**.

So that, assuming that the record in *Bradford v. Hall*, supra, supports this statement therein by Judge Hill, and since it is agreed in the record in the case at bar that this **June 27, 1871**, patent as set out in the record is the same patent as that in *Southern Pine Company v. Hall*, supra, and in *Becker v. Columbia Bank*, supra; it conclusively appears, or is made to appear, that the Supreme Court of Mississippi dealt with identically the same class of lands, those conveyed by the company before the enactment of said acts of 1873,—in *Becker vs. Columbia Bank*, supra, as did the Federal Court in the case of *Southern Pine Company v. Hall*, supra and as this Court is called upon to deal with in the case at bar. And, thus it has been made to appear by the record in the case at bar, read and considered in the light of the said case of *Bradford v. Hall*, supra that counsel for petitioners is mistaken when he says that the Supreme Court of Mississippi, in *Becker v. Columbia Bank* supra, was dealing with a class of lands differently situated from the lands involved in the case of *Southern Pine Company v. Hall*, supra, and those lands involved in the case at bar, and that counsel is mistaken when he says that in said case of *Becker v. Columbia Bank* the lands had not been conveyed by the Company prior to the enactment of said Act of 1873.

In this connection, we direct the attention of the Court, if it is proper for us to do this, to the deposition of M. S. Baldwin which is set out in the original transcript of the record from the Circuit Court of Appeals in the case of *Southern Pine Company vs. Hall*, supra, transmitted to this Court along with the petition for writ of certiorari from this Court to said Circuit Court of Appeals in that case, which writ of certiorari was denied by this Court by memorandum decision in the case styled *Southern Pine Company v. Hall*, 180 U. S. 639; which deposition shows (Top page 21 of record of the Circuit Court of Appeals in said case) that M. S. Baldwin purchased all the Pearl River Improvement Company lands, and which deposition

shows (middle page 24 of the record of the Circuit Court of Appeals in said case) that Baldwin negotiated for said lands in 1872, and purchased the same about sixty days after beginning said negotiations.

If petitioners had pleaded in the lower Court that the Act of 1873 ratified and confirmed their title on the theory, as now claimed, that the Act provided and dealt with the lands in two classes, and that the lands involved in the cases of Hardy v. Hartman, supra, and Becker v. Columbia Bank, supra, fall within the class designated by counsel as class (a), or lands not theretofore sold by the Company; and that the lands involved in the case at bar and those lands involved in the case of Southern Pine Company v. Hall, supra, fall within the class designated by counsel as class (b), or lands which had then or have been sold by the Company; then we would have had an opportunity to meet this on the trial of the case in the District Court under proper pleadings and proof. We would have had an opportunity to show by authenticated copies of the records before the Supreme Court of Mississippi in Hardy v. Hartman, supra, and in Becker v. Columbia Bank, supra, and by authenticated copies from the land deed records of the counties wherein the lands involved in those two cases are situated that the lands involved in said cases were sold and conveyed by Pearl River Improvement & Navigation Company to M. S. Baldwin in November, 1872. Moreover, we would have had an opportunity to show by such records that the claimant of the lands in Becker v. Columbia Bank, supra, pleaded and proved his Pearl River Improvement & Navigation title, including the patent to Pearl River Improvement & Navigation Company and a deed from said company to said Baldwin dated November 20, 1872, conveying the lands involved in said case to said Baldwin; and also that said claimant pleaded and offered in evidence in that case the said Act of 1873, which is set out as Exhibit "C" to the petition for certiorari herein.

THE ACT OF 1873 HAS BEEN BEFORE THE SUPREME COURT OF MISSISSIPPI AND BEFORE THE FEDERAL COURT, AND IS NOT NOW PRESENTED TO A COURT FOR THE FIRST TIME.

In the case of *Becker v. Columbia Bank*, *supra*, not only did defendant plead and prove the Pearl River Improvement & Navigation Company title, including the patent to said company, and a deed from said company to M. S. Baldwin dated November 20, 1872, conveying to him the lands involved in that case; but also pleaded and offered in evidence said Act of 1873 as a ratification of his title to the lands involved in that case. And yet the Supreme Court of Mississippi in that case, with this same title and this same Act pleaded and proven by defendant in the trial Court, declared the decision in the case of *Hardy v. Hartman*, *supra*, to be a rule of property as to all Pearl River Improvement & Navigation Company titles. Not only was this Act before the Supreme Court of Mississippi in *Becker v. Columbia Bank*, *supra*; but in the case of *Edward Hines Yellow Pine Trustees v. F. C. Martin*, reported in Vol. 99 page 825 *Southern Reporter*, but not reported in the official State Reports, this Act of 1873 was presented and relied on by the appellants in that case, who are the petitioners in the case at bar, as a ratification of their Pearl River Improvement & Navigation Company title through which they claim in the case at bar. This Act of 1873 was presented and relied on as a ratification of the Pearl River Improvement & Navigation Company title in that case by the same attorney who represents petitioners before this Court in the case at bar; and the same argument was made in that case that is being here made in the case at bar. In the case of *Edward Hines Yellow Pine Trustees v. F. C. Martin* *supra*, the Supreme Court of Mississippi, by affirming *per curiam* the judgment of the lower court, held that the Pearl River Improvement & Navigation Company title was void in that case, and that the same was not ratified by the Act

of 1873. There is no statement of the facts set out in the report of that case, but only a memorandum affirmance **per curiam**. The report does show, however, that a suggestion of error was filed in that case and was overruled on May 12, 1924; and the report shows, moreover, the attorneys who represented appellants in that case are the same who represent petitioners in the case at bar. The attorneys who filed that suggestion of error, and the Court which overruled the same knew at the time what was contained in the record in that case and what was presented for consideration of the Court by the suggestion of error; and by reference to the original records in *Hardy v. Hartman*, *supra*, and *Becker v. Columbia Bank*, *supra*, in the archives of the Supreme Court of Mississippi they knew or could have known what was contained in and presented by those cases. In this connection, and in the light of what is actually shown by the report of the case of *Edward Hines Yellow Pine Trustees v. F. C. Martin*, *supra*, taken in connection with the fact that the Supreme Court of Mississippi could know in that case, in considering the suggestion of error, by reference to their archives what is shown by the record in said cases of *Hardy v. Hartman* and *Becker v. Columbia Bank*, we direct the attention of the Court to a statement made by counsel for petitioners in their brief (page 12) wherein they say the case of *Southern Pine Company v. Hall*, *supra*, is the **only** case in **any** court that has ever passed upon the title to lands situated and classified as are the lands involved in the case at bar, which statement is made by counsel in connection with his further statement that in the cases of *Hardy v. Hartman*, *supra*, and *Becker v. Columbia Bank*, *supra*, the Supreme Court of Mississippi was dealing with lands patented to Pearl River Improvement & Navigation Company and not conveyed by it prior to the enactment of said Act of 1873, and that in the case of *Southern Pine Company v. Hall*, *supra*, the Circuit Court of Appeals was dealing with lands which had been conveyed by said Com-

pany prior to the enactment of said Act of 1873. As heretofore pointed out to the Court, there is nothing in the record in the case at bar, and there is nothing contained in the cases of Hardy v. Hartman, supra, and Becker v. Columbia Bank, supra, and Edward Hines Yellow Pine Trustees v. F. C. Martin, supra, as those cases appear reported in the reports, to warrant either of said statements. The true facts in each case will be reflected by the original transcript thereof now in the archives of the Supreme Court of Mississippi, which records were, as said, available to that Court when they passed upon the suggestion of error in Edward Hines Yellow Pine Trustees v. F. C. Martin, supra. We do not know whether this Court would permit us to show by authenticated copies taken from those records what the true facts are, by way of answer to the aforesaid statement by counsel for petitioners which they have gone out of the record in the case at bar to make. However, we have had printed under separate cover authenticated copies of records taken from Becker v. Columbia Bank, supra, and from Edward Hines Yellow Pine Trustees v. F. C. Martin, supra, which show the true facts in these respects, and which we will, if permitted by the Court on the hearing of this case, or if the information is desired in this case by this Court, file in this case as an exhibit to this brief.

CONCLUSION

The agreed statement of facts in the case at bar (R. 69, paragraph 9) admits that in that part of Marion and Hancock counties lying south of the 31st parallel, (which territory embraces the whole of Pearl River and Hancock counties at this time), all lands which were patented to the Pearl River Improvement & Navigation Company under the Act of April 8, 1871, creating said company, were afterwards "held" by the state and patented to divers persons under the general laws providing for the

disposal of the swamp lands. The word "**held**" is a misprint in the transcript; the word used in the agreement is "**sold**." It thus appears that out of the five original counties embraced in the Act of 1871, it is admitted in this record that in at least two counties (Hancock and Pearl River) conflicting titles have been issued by the State of Mississippi on all lands patented to Pearl River Improvement & Navigation Company. In fact conflicting patents have been issued to all of the more than 100,000 acres of lands patented to Pearl River Improvement & Navigation Company. Such of these titles as have been litigated in the state court have consistently resulted in the upholding of the second patents, and the cancellation of the prior patent to Pearl River Improvement & Navigation Company; and such will be the result of every case tried in the state court wherein these conflicting titles are litigated. There is but one case, *Southern Pine Company v. Hall*, supra, in which litigation on these conflicting titles resulted in the upholding of the old patent. That case, however, was tried upon an agreed statement of facts by which, as heretofore said, we consider the parties submitted to and invited the independent judgment of the Federal Court on the title; and that case involved only a few thousand acres of these lands.

If this Court in this case does not yield to the settled course of decisions by the State Court fixing a rule of property governing this Pearl River Improvement & Navigation Company title, but instead, holds that the said title is valid, we will then have in Mississippi many thousands of acres of land the conflicting title to which, if claimed by residents of the same state, is to be settled in the State Court by one rule and in favor of the junior patent, and the conflicting title to which, if claimed by residents of different states, is to be settled in the Federal Court by a different rule and in favor of the senior patent. In other words, we will have the anomolous situation in Mississippi that a title resting upon the junior patent is

perfectly valid so long as the claimant under the senior patent is a resident of the same state as the claimant under the junior patent; but at once diversity of citizenship arises between these two claimants, their positions are reversed,—the junior patent is no longer valid, the senior patent is no longer void. We do not believe it is to be said of the two systems of judicial tribunals that a speculator, by the simple expediency of crossing the state line, may gamble with these titles and call upon one court to enforce as valid a claimed title which, before he crossed the state line, was worthless and could not be enforced by him in the other court which alone was open to him before he crossed the state line. We do not believe it was ever intended that there should arise under our State and Federal systems of jurisprudence such an incongruity in the administration of the laws governing land titles as would result in the courts of one or the other being used by speculative litigants in a game of hide and seek. No relief can be given a defeated litigant in the State Court, claiming under the Pearl River Improvement & Navigation Company title, by the United States Supreme Court on writ of error to the State Court. No Federal question would be presented in such case. *Bacon v. Texas*, 163 U. S. 207, 41 L. ed. 132, 16, Sup. Ct. Rep. 1023.

We think this Court must have had in mind just such a situation as that pictured above when, in the course of the opinion in *Brine v. Hartford Fire Ins. Co.*, 96 U. S. 627 (24 L. ed. 858), when called upon to enforce a claimed right in land different from that of the settled law of Illinois, this Court said:

“To do so is at once to introduce into the jurisprudence of the State of Illinois the discordant elements of a substantial right which is protected in one set of Courts and denied in the other, with no superior to decide which is right.”

Principles of law of this kind do not descend to mere reported cases for authority, they ascend to the pinnacles of supreme justice for authority, and arise out of the necessity for the orderly administration of justice by the co-ordinate systems of judicial tribunals,—Federal and State,—peculiar to this Country.

We respectfully submit that the Circuit Court of Appeals decided this case correctly, and that the same should be affirmed by this Court.

Respectfully submitted,

WILLIAM H. WATKINS,
FLEET C. HATHORN,
HATHORN & WILLIAMS,

Attorneys for Respondents.

We certify that we have, more than five days next before this case is set for hearing by the Court, delivered to Hon. T. J. Wills, one of the attorneys for petitioners, a copy of the foregoing brief.

WILLIAM H. WATKINS,
FLEET C. HATHORN,

Attorneys for Respondents.

(30,281)

APR 24 1925

WM. R. STANSBURY
CLERK

**IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA**

**OCTOBER TERM, 1924
No. 363**

**EDWARD HINES YELLOW PINE TRUSTEES,
PETITIONERS,**

vs

**ANNA F. C. MARTIN, F. C. MARTIN, H. P. LEWIS
AND GEORGE LAWRENCE
RESPONDENTS**

**ON A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

EXHIBIT TO BRIEF FOR RESPONDENTS

**WILLIAM H. WATKINS,—Jackson, Miss.
FLEET C. HATHORN,—Hattiesburg, Miss.
HATHORN & WILLIAMS,—Poplarville, Miss.
Attorneys for Respondents.**



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(30,281)

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**ON A WRIT OF CERTIORARI TO THE UNITED
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FOR THE FIFTH CIRCUIT**

EXHIBIT TO BRIEF FOR RESPONDENTS

STATEMENT IN EXPLANATION OF EXHIBIT

This exhibit is divided into three sections or headings:

(a) Authenticated copy of record of Mississippi Supreme Court showing suggestion of error filed by appellant, request by the Court for reply thereto by counsel

for appellee, and order of the Court overruling said suggestion of error in case No. 23,035, docket of said Court, styled Edward Hines Yellow Pine Trustees v. F. C. Martin, and reported in 99 Sou. Rep. 825, and referred to in the brief to which this is an exhibit.

(b) Authenticated copy of record of Mississippi Supreme Court showing answer of defendant with copy of deed from Pearl River Improvement & Navigation Company to M. S. Baldwin dated November 20, 1872, introduced therein in case No. 17,851, docket of said Court, styled Becker v. Columbia Bank, and reported in 112 Miss. 819, and referred to in the brief to which this is an exhibit.

(c) Certificate of Clerk of Chancery Court of Lawrence County, Mississippi, under seal, showing description of land involved in the said case of Becker v. Columbia Bank, *supra*, and also showing that said lands were embraced in patent from State of Mississippi to Pearl River Improvement & Navigation Company dated June 27, 1871, and that said land was embraced in deed from said Company to M. S. Baldwin dated November 20, 1872.

The purpose of the exhibit is to show those things referred to in our brief to which the same is an exhibit, at page 46 thereof, by way of answer to the statement made by counsel, not supported by the record in the case at bar but insisted upon by counsel, that the lands dealt with by the Act of 1873, set out as Exhibit "C" to the petition for certiorari herein, were divided into two classes; (a) those lands which at that time still owned by the Pearl River Improvement & Navigation Company, and (b) those lands which at that time had been deeded away by the company; and by way of answer to the further statement by counsel that the cases of Hardy v. Hartman, 65 Miss. 504, and Becker v. Columbia Bank, 112 Miss. 819 dealt with lands designated by counsel as class (a); and by way of answer to the further statement by counsel that

the Supreme Court of Mississippi has never had before it or passed upon the question of the validity of the title to lands conveyed by the Pearl River Improvement & Navigation Company prior to said Act of 1873 and falling within what counsel designated as class (b) of the lands; and in order to show the lands dealt with by the Circuit Court of Appeals in the case of Southern Pine Company v. Hall, 105 Fed. 84, and in the case at bar are exactly the same kind of lands dealt with by the Supreme Court of Mississippi in Becker v. Columbia Bank, supra, and in Edward Hines Yellow Pine Trustees v. F. C. Martin, supra; and in order to show that in both those cases the claimant under Pearl River Improvement & Navigation Company title relied on the Act of 1873 as a ratification of his title.

(a) AUTHENTICATED COPY OF MISSISSIPPI SUPREME COURT RECORDS IN CASE NO. 23,035, EDWARD HINES YELLOW PINE TRUSTEES v. F. C. MARTIN, REPORTED 99 SOUTHERN REPORTER 825.

**IN THE SUPREME COURT OF THE
STATE OF MISSISSIPPI.**

NO. 23, 035.

**EDWARD HINES YELLOW PINE TRUSTEES ET ALS,
Appellants,**

V.

F. C. MARTIN,

Appellee.

SUGGESTION OF ERROR

MAY IT PLEASE THE COURT:

This case was affirmed without an opinion, and for that reason it is not apparent just what points were con-

sidered and passed upon by the court in reaching its decision.

One point presented and urged on appeal was the pleadings and the result reached on the trial under the pleadings contrary to the remedial laws of the State. This point was briefed at length, and we think sufficiently presented to the court to render the court's decision thereon final as to that point. No further reference, therefore, will be made to it in this assignment of error.

Another point presented was the question of adverse possession. The case was remanded to the court in banc for reargument. On the reargument the question of adverse possession was stressed. We are satisfied with the presentation of the case as to that feature, and will not discuss that point in this assignment of error.

The point that we desire to press is: The title of appellants held under the Pearl River Improvement and Navigation Company's patent is a good and valid title. This point was not urged theretofore for the reason that Chapter 114, of the Laws of 1873, was overlooked and was not presented to this court in the consideration of the case. In fact, the aforementioned Act of the Legislature had escaped our attention, and it was assumed that *Hardy v. Hartman*, and *Becker v. Columbia Bank* were controlling in this case as to the validity of the title held under the Pearl River Improvement and Navigation Company's patent. Before we enter upon a discussion of the Acts of the Legislature and the *Hartman* and *Becker* cases, we deem it advisable to restate the facts as they appear in the record.

On page 61 of the record, Land Record Book 4 of Pearl River County, at page 191, is introduced, being the patent from the State of Mississippi to the Pearl River Improvement and Navigation Company, dated June 11,

1871. On page 65, the same record book, (page 215) was introduced, which is a deed from the Pearl River Improvement and Navigation Company to M. S. Baldwin, executed on the 20th day of November, 1872. On page 66 the same record book, (page 239) is introduced, showing the sale and conveyance of the said land from M. S. Baldwin to Israel Hall on the 17th day of April, 1873. The record then discloses a perfect chain of title from Israel Hall to the appellants in this case.

Hardy v. Hartman, 65 Miss. 305, and Becker v. Columbia Bank, 73 Southern, 798, are not authorities in this case and have no probative weight in its consideration.

The patent to the Pearl River Improvement & Navigation Company was issued June 11, 1871, under the authority of the Act of April 8, 1871. The Pearl River Improvement and Navigation Company was created as a corporate agency of the State for the purpose of receiving lands donated to be sold and the proceeds used in the development and drainage of Pearl River. The Legislature in 1873 recognized the fact that it was impractical to improve Pearl River, and by Chapter 114, of the laws of that session, dealt with the subject in accordance with the conditions confronting it at that time.

It will be noted that the Pearl River Improvement and Navigation Company had, previous to the consideration of the subject by the Legislature, sold and conveyed the lands in question, as is shown by the deeds introduced on the trial of this case. It is true that not all of the lands embraced in the grant to the Pearl River Improvement and Navigation Company had been sold and conveyed by that Company. The legislature dealt with the lands donated to the Pearl River Improvement and Navigation Company and still owned by said company in one way, and also with the lands that had been donated to the said company and by it sold and conveyed in quite another way.

Chapter 114 of the Acts of 1873 relieved the Pearl River Improvement and Navigation Company of the burden of the improvement of Pearl River. The Act provided that the patents which had been issued to the company should be deposited with the Secretary of State, and that upon the payment of twenty-five cents per acre they should be redelivered to the company. The Act further provided that upon the payment of twenty-five cents per acre for all lands with in the grant for which patents had not been issued, a patent therefor should issue to said company. By Section 4 of the Act, it was provided that the payment of twenty-five cents per acre referred to in the first section of the Act should be made on or before the 1st day of October, 1873; otherwise all rights, title, interest and claim of said company should revert to the State and rest absolute in the State.

The Legislature in the same act dealt with these lands which had been sold and conveyed by the Pearl River Improvement and Navigation Company. The said act in Section 6 specifically dealt with this character of lands as being separate and distinct from the other lands, for which patents had issued or were included in the grant of April 8, 1871. Section 6 of the act provides:

"BE IT FURTHER ENACTED, That all Acts and parts of acts and all acts, DEEDS, and proceedings whatever of the Pearl River Improvement and Navigation Company, be, and the same are, hereby legalized, ratified, and confirmed."

This Act was approved April 19, 1873, and became a law.

It is certainly clear that the Legislature, by the Act of 1873, dealt with the lands donated by the Acts of 1871 to the Pearl River Improvement and Navigation Company,

in two separate and distinct characters dependent upon the status of the lands at that time. The Pearl River Improvement and Navigation Company evidently never complied with the provisions of the Act by paying the twenty-five cents per acre for the lands still owned by it for which patents had issued, or for the lands embraced in the act, and for which no patent had issued. A failure to comply with this provision of the law rendered the patents to the lands, the title of which was vested at that time in the Pearl River Improvement and Navigation Company, void. The act provided for the cancellation of the bond, showing that a bond had been issued. That fact, however, does not enter into a consideration of this case, and we refrain from a discussion of that feature of it.

Now let us examine the case of *Hardy v. Hartman*. In this case no patent for the land had ever issued to the Pearl River Improvement and Navigation Company. The lands had been sold for taxes on the assumption that title had passed by the act itself to said company. The court held that the instrument was not a sufficient compliance with the law to pass the title without a patent. It further held that if a patent had issued, under the provisions of the bond before the court that it would have been void. Let it be observed, that these lands had not been sold by the Pearl River Improvement and Navigation Company prior to April 19, 1873.

Becker v. Columbia Bank, *supra*, is identically the same state of facts as *Hardy v. Hartman*, except a patent is shown to have issued. The Pearl River Improvement and Navigation Company has never sold the lands involved in the *Becker* case, and therefore they came within the purview of the act of 1873, in which the lands were still owned by the Pearl River Improvement and Navigation Company. Under the provisions of the Act of 1873, no patent could issue to the Pearl River Improvement and Navigation Company for the lands involved in the *Hart-*

man case until after the price of twenty-five cents per acre had been paid. No patent was ever issued. The presumption was that the price had not been paid, and of course no title passed.

In the case of *Becker v. Columbia Bank*, a patent had issued in 1871 to the Pearl River Improvement and Navigation Company. The said Company, however, had never parted with the title, and the lands came within the provisions of the Act of 1873, requiring the payment of twenty-five cents per acre or the cancellation of the said patent and the revesting of the title absolute in the State. It was not shown that the Act of 1873 was complied with by the company, and therefore the patent was void.

Now *Hardy v. Hartman* and *Becker v. Columbia Bank* are rules of property as to the validity of the title to all the lands granted to the Pearl River Improvement and Navigation Company that come within the first class of lands above dealt with. But these cases have no bearing whatever; have never attempted to pass on and do not control, as rules of property, or otherwise, that class of lands dealt with by Section 6 of Chapter 114 of the Laws of 1873.

The land, the title to which is in question here, are shown by the record in this case to be lands coming within that class of lands dealt with in Section 6 of Chapter 114 of the Laws of 1873.

The Pearl River Improvement and Navigation Company had sold the lands involved in this suit in 1872 to M. S. Baldwin. On April 17, 1873, M. S. Baldwin sold them to Israel Hall. This second sale was made just two days before Chapter 114 of the Laws of 1873 became operative. It is clear that it was the title to the lands thus situated and these lands that the Legislature had in mind in enacting Section 6 of the said Act. This act provides

that all the * * deeds, * * * whatever of the Pearl River Improvement and Navigation Company be and the same are hereby legalized, ratified and confirmed. If the Legislature ratified and confirmed the deed of the Pearl River Improvement and Navigation Company, then the title became absolute in the vendees of that company.

Cutler v. Madison County, 56 Miss. 115.

Bridgeport v. Railroad, 15 Conn. 475.

Fredrick v. Augusta, 5 Ga. 561.

Mattingly v. District of Columbia, 97 U. S. 687.

State v. Newark, 27 N. J. L. 187.

New Orleans v. Clark, 96 U. S. 644

There are many other authorities on this point but we deem it unnecessary to cite more.

We submit to the court that the Suggestion of Error should be sustained, and the cause should be reversed and dismissed.

Respectfully submitted,

(Signed)

DAVIS & WALLACE,

T. J. WILLS,

Attorneys for Appellants

Endorsed:

Filed March 6, 1924.

W. J. Buck, Clerk.

IN THE SUPREME COURT OF MISSISSIPPI

No. 23035

**EDWARD HINES YELLOW PINE TRUSTEES, ET ALS,
IN BANC:**

VS.

PER CURIAM.

F. C. MARTIN

Before proceeding further with the consideration of the Suggestion of Error filed herein, the Court desires a reply thereto from counsel for the appellee, to be filed on or before Thursday, April 10th, 1924; to which counsel for the appellant may reply within one week after the filing thereof. Copies to be served in accordance with the rules of this Court.

March 26th, 1924.

Sent to Messrs.

T. J. Wills, Hattiesburg, Miss.

Hathorn & Williams, Poplarville, Miss.

Davis & Wallace Purvis, Miss.

Minutes of Supreme Court of Mississippi.—May 12, 1924

Edward Hines Yellow Pine Trustees, et al
No. 23 035—Vs.
F. C. Martin

This cause coming on to be heard on the suggestion of error filed herein and this court having sufficiently considered the same doth order and adjudge that said suggestion of error be and the same is hereby overruled.

State of Mississippi
Hinds County

I, W. J. Buck, clerk of the Supreme Court of Mississippi do hereby certify that the attached pages contain a true and correct copy of the suggestion of error, order overruling suggestion of error, and notice sent out by the court as to filing of briefs on suggestion of error in Cause No. 23 035 Edw. Hines Yellow Pine Trustees, et al vs. F. C. Martin.

Witness my hand and the Seal of said Supreme Court hereunto affixed at offices in the Capitol in the City of Jackson, Mississippi, this the 17th day of April, 1925.

(Seal)

W. J. BUCK,
Clerk of the Supreme Court of Mississippi.

(b) AUTHENTICATED COPY OF MISSISSIPPI
SUPREME COURT RECORDS IN CASE NO. 17,851,
BECKER v. COLUMBIA BANK, REPORTED 65 MISSIS-
SIPPI REPORTS 504.

STATE OF MISSISSIPPI,
Lawrence County.

IN THE CHANCERY COURT OF SAID COUNTY

Columbia Bank

vs.

Mrs. Ella May, et al.

**ANSWER OF THE DEFENDANTS TO THE BILL OF
COMPLAINT**

Now come the defendants and saving and reserving to themselves all benefit of exceptions which they have, or might take, to the bill of complaint, because of its many imperfections, and answering thereto, they say;

That the deny and say that it is untrue that the complainant is the legal and equitable owner of the lands in Lawrence County, Mississippi, described as the SW $\frac{1}{4}$ of Section 17, Township 5, Range 12 East.

The defendants admit that said lands were granted to the state of Mississippi by act of Congress of date of September, 28th, 1850, and that they are of the class known as swamp and overflow lands and that they were donated to the state of Mississippi as belonging to this class of lands. Said lands lying and being situated on Pearl River in Lawrence County and being within the exception contained in Sec. 6, Art. 8 Constitution of 1869, and being of the class which the Legislature had the right and authority to issue patents to the P. R. N. & Imp. Co.

The defendants say that they deny and that it is untrue that the title to this land remained in the state of Mississippi until the 12th day of August, 1902, but they admit that on this date the state, by its patent, undertook and pretended to convey the said lands to one W. W. Bradshaw. The defendants aver and charge on information and belief, that long prior to August 12th, 1902, the state of Mississippi parted with its title to said land.

The defendants say that they are without knowledge of the facts alleged in the bill in regard to the conveyances running from W. W. Bradshaw, through various and sundry parties, on down to the complainant, and being without such knowledge the said allegations of the bill are hereby denied.

The defendants deny and say that it is untrue that the complainant is in possession of the land and that the defendants are in nowise in possession thereof, and have never at any time been in possession of said land. They admit that they have a deed to the land and that they claim the title thereto, but they deny that their right, title or interest in said land is a mere pretended right, title or interest.

They are advised, aver and charge, on information and belief, that W. W. Bradshaw on the 12th day of August, 1902, did not acquire any title by his alleged and pretended patent issued to him by the state of Mississippi from E. H. Nall, Land Commissioner, countersigned by A. H. Longino, Governor, and J. W. Power, Secretary of State, for the reason that long prior thereto, to-wit:

On March 12th, 1852, by an act of the Legislature of the State of Mississippi, approved on that date, the said land was granted to a Board of Commissioners to be appointed as provided for in said act. The title of said act being:

"AN ACT TO PROVIDE FOR THE APPROPRIATION OF THE SWAMP AND OVERFLOW LANDS ON PEARL RIVER TO THE COMMISSIONERS OF SAID RIVER HEREINAFTER TO BE APPOINTED FOR THE DRAINING OF SAID SWAMP LANDS AND FOR OTHER PURPOSES."

By Section 2 of this act, it was provided that the swamp and overflow lands lying and situated on Pearl River in the County of Lawrence and included in the grant of said lands made by act of congress under date of September 28th, 1850, to the State of Mississippi be, and the same were thereby presented and granted to the Commissioners of the Southern District of Pearl River and their successors in office for the purpose of reclaiming and draining said swamp and overflowed lands by ditching, leveeing or removing obstructions from said river.

In 1871 the Legislature passed "An Act to Incorporate the Pearl River Improvement and Navigation Company and for other Purposes." By Section 4 of this Act the Pearl River Improvement and Navigation Company were declared to be the legal and lawful successors to the Board of Commissioners appointed in pursuance of the Act of March 12th, 1852, and as such successors, vested with all the rights, properties, claims and demands, whether real, personal or fixed, belonging to said Board or under their control.

By Section 5 of the Act of 1871 it was provided "That said Company shall within sixty days after passage of this Act, file with the Secretary of State, a bond in the sum of \$50,000.00, with two or more good sureties, who shall make oath that they are worth the penalty of the bond over and above all liabilities and exemptions which sureties shall be residents of this state and be approved by the Governor, and after the filing and approval

of said bond, said Secretary of State shall, from time to time, when demanded by said Company, make out a patent, or patents, for said land to said company, which patent, or patents, shall be signed by the Governor and countersigned by the Secretary of State and vest the fee simple of said lands in this Company; provided nothing in this Section shall be construed to require patents to issue for any lands theretofore sold to legal purchasers.

That acting under the provisions of the Act of the Legislature, the Pearl River Improvement and Navigation Company tendered to the state its bond, conditioned as required by law with two or more good and sufficient sureties in the penal sum of \$50,000.00, and the said bond was approved an May 12th, 1871, by J. A. Alcorn, Governor of the State of Mississippi which said bond is in the words and figures following, and was a substantial compliance with the requirements of said act:

" BOND"

"Pearl River Improvement and Navigation Company.

Know all men by these presents, that we, Walter P. Billings, Samuel A. Vose, A. Warner, O. C. French, are held and firmly bound unto the State of Mississippi in the sum of fifty thousand dollars, the payment of which well and truly to be made, we bind ourselves, our heirs and executors, jointly and severally, by these presents The conditions of the above bond is such, that whereas by an Act of the Legislature of the State of Mississippi, entitled "An Act to Incorporate the Pearl River Improvement and Navigation Company, and for other Purposes," a company was incorporated called the Pearl River Improvement and Navigation Company, which Company is charged with certain duties and bound by certain conditions in said act specified. Now, if said company will well and truly perform or cause to be performed, all the acts and things mentioned in said act of incorporation,

and comply with all the terms and conditions in accordance with the tenor and meaning of said act, then this bond to be void, otherwise to remain in full force and effect.

In witness whereof said persons have hereunto set their hands and seals this the 7th day of April, 1871.

W. P. BILLINGS (Seal)
By S. A. VOSE, his attorney
A. WARNER (Seal)
O. C. FRENCH (Seal)

Approved May 12th, 1871

A. L. ALCORN, Governor."

That after the filing and approval of the said bond, the Pearl River Improvement and Navigation Company applied to the Secretary of the State and to the Governor thereof for a patent to certain lands including the SW $\frac{1}{4}$, Section Seventeen, Township Five, Range Twelve East, and on the 27th day of June, 1871 a patent was duly issued by the Secretary of State, which said patent was filed for record and is duly recorded in Book M, pages 118 to 121 of the Deed Records of Lawrence County, Miss., to which reference is here made as a part of this answer and a copy of the said patent will be filed with said answer and made a part of the same as Ex-A.

That during the year 1873 the Legislature of the State of Mississippi passed another act validating and curing any defects that may have existed with reference to and of the matters and things pertaining to these lands in the title of the Pearl River Improvement and Navigation Company, and validating the patents issued by the state to this Company, and it has been held and decided by the Circuit Court of Appeals of the United States, that these acts of the Legislature and the patents issued by the Governor are legal and valid and that the Pearl River

Improvement and Navigation Company acquired a legal and valid title to the lands herein described, and that the persons holding and claiming the title under the Pearl River Improvement and Navigation Company are entitled to protection. The decision by the said Circuit Court of Appeals referred to, and the opinion of the court will be found reported in the case of—

Hall vs. Southern Pine Co., 105 Fed. Rep. page 84. The defendants deny therefore, and say that it is untrue as alleged in the complainant's bill that the patent issued by the State of Mississippi on the 27th day of June, 1871, is void, because of the failure of the Pearl River Improvement and Navigation Company to comply with the terms of the act under which said patent was issued.

They deny and say that it is untrue that the Company did not file with the Secretary of State a bond with security as provided by said act and that no such bond was approved by the Governor, and countersigned by the Secretary of State.

The defendants are without knowledge as to whether the promoters of the Pearl River Improvement and Navigation Company were guilty of any fraud in the organization of the said Company, and they are without knowledge of what manipulations, if any were used by the said Company in securing the patent, and they say that it is immaterial to them whether said patent was secured by fraud or not, because even though secured by fraudulent means the defendants say that they are the purchasers of said property for a valuable consideration, and without notice of any fraud on the part of said Company in obtaining said land from the state.

They deny and say that it is untrue that this patent was held to be fraudulent and void by the courts in this state more than twenty years ago and that it has ever since been so regarded, and they deny and say that it is untrue that they purchased the lands in reliance upon

the uniform holding of our courts, including our Supreme Court that the pretended patent of the Pearl River Improvement and Navigation Company was void.

The defendants deny and say that it is untrue that each of the several conveyances from the Pearl River Improvement and Navigation Company down to these defendants were likewise fraudulent and void and that they passed no title to the defendants and did not affect the real title to said lands.

The defendants deny and say that it is untrue that their claim of ownership to the property and the claim of those under whom they hold title passed on the patent from the said State of Mississippi to the Pearl River Improvement and Navigation Company, and the several deed made in pursuance thereof cast a cloud, doubt and suspicion on the complainant's title.

Further answering the defendants say that the Pearl River Improvement and Navigation Company on November 20th, 1872, sold and conveyed the land involved in this suit to one, Matthew S. Baldwin, by deed of conveyance, which was duly filed for record and is recorded in Book M pages 122 to 125 of the Deed Records of Lawrence County, Miss., and on March 17th, 1873, the said M. S. Baldwin sold and conveyed the said land to one, THOS. A. Flowers, by deed which was duly filed for record and is recorded in Book M, pages 158 to 160 of the Deed Records of said County, and that on March 3rd, 1884 the tax Collector of Lawrence County, Miss., sold and conveyed the said land to the State of Mississippi for the taxes assessed thereon to Flowers and Norton, and delinquent for the taxes due thereon for the year 1883.

That one John D. Norton had acquired some interest in said land from the said Thos. A. Flowers, or because connected with it in some way, so that it became and was

assessed to Flowers and Norton. A certified copy of the list of land forfeited to the State of Mississippi, embracing the above described land on March 3rd, 1884, will be filed with this answer and made a part of the same as Ex-B, and if not filed as such exhibit, the same will be introduced in evidence on the trial of this cause.

That on February 25th, 1887, the State of Mississippi by patent, sold and conveyed the said land to one J. M. Phillips and the same appears of record Book Z, page 349 of the Deed Records of Lawrence County, Mississippi. The same having been filed for record on April 18th, 1887.

That on March 4th, 1887, J. M. Phillips sold and conveyed the said land to one, A. E. Randle, and by this deed of conveyance it was duly filed for record on April 17th, 1887, and is recorded in Book Z pages 252 and 253 of the Deed Records of Lawrence County. That on theday of, 1907, the said A. E. Randle, for and in consideration of the sum of \$4500.00, paid to him in cash by the defendants, sold and conveyed the above described lands together with other lands to these defendants by deed of conveyance, which was duly filed for record, and is recrded in Book..... pageof the Deed Records of Lawrence County.

The defendants are advised and so charged and aver that they are bona fide purchasers of said land for value and without notice, and that under the Constitution and Laws of the United States, and the Decisions of the Courts of the United States, they are the owners of legal and equitable title to the land involved in this litigation, and they claim that their title to said property is guaranteed to them by the Constitution and Laws of the United States, and they claim all the benefits, rights and potec-tion guaranteed and granted to them by said Constitu-tion and Laws of the United States.

That the defendants are advised and they so charge and aver on information and belief that the State of Mississippi, by the Act of the Legislature herein before referred to, granted the title to this property to the Pearl River Improvement and Navigation Company, and also by its patent issued thereunder, and the said property then became the private property of private parties and is not subject afterwards to be interfered with by either the Legislature, Executive or Judicial Department of the State. That there is no principle known to our system of government under which private property can be taken from one person and presented to another for the private use and benefit of such other person. Neither can the same be taken by the state for public use, except on such compensation being duly made. The defendants claim the title and ownership to the land under the Constitution of the United States. They invoke the benefit of that provision which says "that no person shall be deprived of life, liberty or property without due process of law," and which guarantees to them the protection of property by the law of the land. They now claim the rights and benefits guaranteed to them by these provisions of the Federal Constitution and the decisions of the United States Circuit Court of Appeals in the construction and interpretation of these legislative enactments, by which the validity of the patent issued thereunder is upheld.

They are advised that the Supreme Court of Mississippi has never squarely and unequivocally passed on the validity of this patent issued June 27th, 1871 to the Pearl River Improvement and Navigation Company unconnected with other issues and questions, and defendants have reason to believe that the final rulings of the court on the validity of this patent when directly presented, without being coupled with other matters will be in accord with the holding of the Federal Court. That these two Courts have concurrent jurisdiction of the subject matter involved in this litigation, and their decisions constitute a "rule of property" and a conflict in decisions

is and would be deplorable in that a non-resident of the State under the rule of property established by the Federal Court is preferred over a resident of the State, and under the "rule of property" established by the State Court the status of the title is left in doubt and uncertainty.

The defendants further say that in as much as the question have presented involves the legality of the Acts of the State and the right of the state to repudiate the Act of both Legislative and Executive Departments, and thus impair the obligations of its own contract, the state is not qualified to sit in judgment on these questions and its Courts and Judges are equally disqualified, because they are but the officers of the State, and to permit such officers and representatives of the State, to pass on these questions is equivalent to allowing a party to sit in judgment in his own case. At any rate the construction sought by the complainant would impair the obligations of the contract made by the state, and violate both the Constitution of the State and of the United States. That the Acts here involved are the acts of the State itself and they should be determined by an impartial tribunal and the only Courts qualified in this jurisdiction to pass on these issues are the Courts of the United States, and the conclusions reached by these Courts are to the effect that the state cannot repudiate its solemn obligations and the validity of the patent is fully sustained.

The defendants ask therefore, that this cause be transferred to the United States District Court for the Southern District of Mississippi, and they offer to make bond for the costs of removal in any reasonable sum which the Court may require.

And now having duly answered the defendants pray that this, their answer may be taken and considered as a cross bill against the complainant and that process may issue for the complainant requiring it to appear before

the Honorable Court at rules on the 2nd Monday in March, 1912 to answer the allegations of this cross bill. And to show cause, if any, why the suit shall not be removed to the United States District Court for the Southern District of Mississippi.

On the final hearing may it please the court to adjudge and decree that the defenants are the real, true, legal and equitable owners of the title to the land sued for and may the right, claim and title asserted by the complainant to the said property be held, adjudged and declared to be null and void and be cancelled as casting a doubt, cloud or suspicion on the title of the defendants and may the said complainant be perpetually enjoined from asserting any right, title or claim to said land.

If the defendants have prayed for wrong, improper or insufficient relief, pray grant it such other relief, general or special as the nature of the case may entitle it to receive, and as in duty bound it will ever pray.

MRS. ELLA MAY
F. F. BECKER
MRS. M. L. JONES
Defendants.

JONES & TYLER,
Their Solicitors.

STATE OF MISSISSIPPI,
Lincoln County,
City of Brookhaven.

Personally appeared before the undersigned Notary Public of the said City, the above named Mrs. Ella May, F. F. Becker and Mrs. M. L. Jones, who being by me first duly sworn, depose and say that the facts stated in the foregoing answer and cross bill as of their personal

knowledge or true and correct, and the matters and things stated on advice, information and belief are believed to be true.

ELLA MAY
F. F. BECKER
MAGGIE L. JONES

Sworn to and subscribed before me this the 15th day of February, 1912.

N. T. TULL,
Notary Public (Seal)

Whereas by an Act of the Legislature of the State of Mississippi, approved on the 8th day of April, 1871, the Legislature of the State of Mississippi incorporated the Pearl River Improvement and Navigation Co. and whereas subsequent to the passage of said Act incorporating the Pearl River Improvement and Navigation Company, said Company organized as by the terms of said Act made and provided, and whereas afterwards the lands hereinafter described was patented to said Company by the State of Mississippi in compliance with the provisions of the Act and whereas on the 4th day of July, 1872, the Pearl River Improvement and Navigation Company did at a meeting duly called and held at the City of Jackson, within the State of Mississippi, the domicile of said Company, pass a resolution authorizing and empowering Samuel A Vose, the President of said Company, to contract, grant, bargain, sell, mortgage, alien, and convey the whole or any part of the land belonging to said Company on such terms and conditions as said Vose thought for the best interest of the Company, and that O. C. French, Secretary affixed the corporate seal of the Company to such deed or deeds.

Therefore, know all men by these presents, that the Pearl River Improvement and Navigation Company by S. A. Vose, President, grant, bargain and sell, alien and convey unto Matthew S. Baldwin for and in consideration of

the sum of Twenty-Eight Hundred and Fifty Dollars in hand paid by the said Baldwin to the Pearl River Improvement and Navigation Company, the receipt of which is hereby acknowledged, to have been received by said Company in full of all consideration for the following described tracts or parcels of land bounded and described as follows, to-wit: North East quarter of the South West quarter, North West quarter of the South West quarter, North West quarter of the South West quarter, and South East quarter of the South West quarter, and South West quarter of the South East quarter, all in Section 17, all in Township 5 N. Range Twelve E.

(With other lands)

To have and to hold aforesaid described tracts or parcels of land together with all the rents, profits, and appurtenances thereunto belonging unto the said Matthew S. Baldwin, his heirs, administrators and assigns forever.

The Pearl River Improvement and Navigation Company and their successors, warranting and defending the title to all and singular the aforesaid tracts or parcels of land as well in law and in equity against the lawful claims of any person whomsoever, all of which the Pearl River Improvement and Navigation Company covenants to well do and perform.

Done at the City of Chicago, within the State of
2
Illinois, this 20th day of November, 1873.

President Pearl River Improvement and Navigation Company, by Samuel A. Vose, President of said Company.

Attest:

C. C. French, Secretary of the Pearl River Improvement and Navigation Company.

State of Illinois,
County of Cook, SS
City of Chicago.

BE IT REMEMBERED that on this twentieth day of November, in the One Thousand Eight Hundred and Seventy Two, before me the undersigned Philip A. Hyne, a commissioner in the City of Chicago, County of Cook and State of Illinois, duly commissioned and qualified by the executive authority and under the laws of the State of Mississippi to take acknowledgment of deeds, etc., to be used or recorded, therein personally appeared Samuel A. Vose, President, and O. C. French, Secretary of the Pearl River Improvement and Navigation Company, to me personally known to be individually named and who executed the foregoing instrument and who each acknowledged that they signed, sealed, and delivered the same on the day and therein named as their voluntary act and deed as the officers of the said Company, and also as the act and deed of the said Pearl River Improvement and Navigation Company, and caused the corporate seal of said Company to be affixed for the purposes and uses therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

PHULIP A. HYNE,
Commissioner for Mississippi in Chicago, Illinois.

Filed and recorded March 23, 1873.
Book M. Pages 122-125.

STATE OF MISSISSIPPI,
Hinds County.

I, W. J. Buck, Clerk of the Supreme Court of the State of Mississippi do hereby certify that the attached pages contain a true and correct copy of answer of the defendants to the bill of Complaint, and deed from the Pearl River Improvement and Navigation Company, by S. A. Vose, President to Matthew S. Baldwin, as found and contained in the record in the Supreme Court of Mississippi in cause 17,851-F. F. Becker, et al v. Columbia Bank, appealed from the Chancery Court of Lawrence County and affirmed by the Supreme Court of Mississippi, January 8, 1917. I further certify that said above named cause is reported in the Mississippi Reports of Supreme Court decisions in 112 Mississippi Reports, page 819-826.

Witness my hand and the Seal of the Supreme Court of Mississippi hereunto affixed at offices in the Capitol in the City of Jackson, this the 17th day of April, 1925.

(Seal)

W. J. BUCK,
Clerk of the Supreme Court of Mississippi.

(c) CERTIFICATE OF CLERK OF CHANCERY
COURT OF LAWRENCE COUNTY RELATIVE TO
LANDS INVOLVED IN BECKER v. COLUMBIA BANK.

STATE OF MISSISSIPPI,
Lawrence County.

I, H. J. Patterson, Clerk of the Chancery Court in and for Lawrence County, State of Mississippi, do hereby certify that the Patent from the State of Mississippi, to The Pearl River Improvement and Navigation Company, dated June 27, 1871, and duly recorded March 24, 1873, in Deed Record "M" on pages 118-121 of the Records of Lawrence County, Mississippi, contains the following land, to-wit:

SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17, Township 5 North of Range 12 East, containing 199.75 acres.

Further that the deed from the Pearl River Improvement and Navigation Company to Matthew S. Baldwin, dated November 20, 1872, and duly recorded March 25, 1873, in Deed Record "M" on pages 122-125 of the Records of Lawrence County, Mississippi, contains the following lands, to-wit: ,

NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, Township 5 North of Range 12, East:

Further that the Case of The Columbia Bank, Vs. F. F. Becker and others, No. 6677 of the Chancery Court Docket, Lawrence County, Mississippi, to quiet title, affected the SW $\frac{1}{4}$ of Section 17, Township 5 North of Range 12 East, Lawrence County, Mississippi.

Witness my signature and seal of office, this May 19th, 1924.

(Seal)

H. J. PATTERSON,
Chancery Clerk.



FILED

APR 30 1925

WM. B. STANSBURY
CLERK

IN 1925

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

No. 363.

EDWARD HINES YELLOW PINE TRUSTEES,
PETITIONERS.

VS.

ANNA F. C. MARTIN, F. C. MARTIN, H. P. LEWIS
AND GEORGE LAWRENCE, RESPONDENTS.

ON A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT.

ADDENDA TO BRIEF FOR RESPONDENTS.

WILLIAM H. WATKINS,

Jackson, Miss.

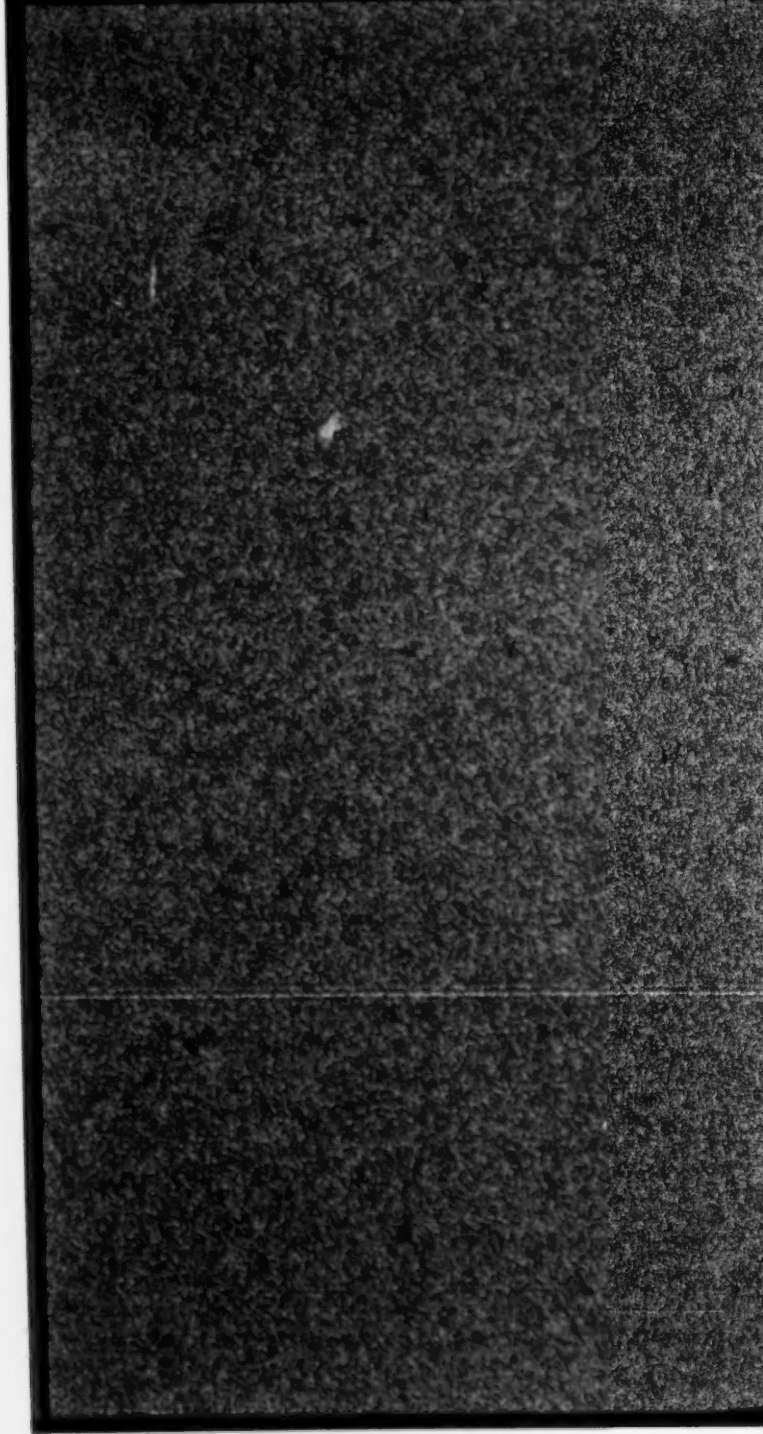
FLEET C. HATHORN,

Hattiesburg, Miss.

HATHORN & WILLIAMS,

Paplarville, Miss.

Attorneys for Respondents.



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1924.

No. 363.

EDWARD HINES YELLOW PINE TRUSTEES,
PETITIONERS,

vs.

ANNA F. C. MARTIN, F. C. MARTIN, H. P. LEWIS
AND GEORGE LAWRENCE, RESPONDENTS.

**ON A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT.**

ADDENDA TO BRIEF FOR RESPONDENTS.

EXPLANATION.

By inadvertence, a discussion of the proper interpretation to be given the Act of 1873 (Appendix "C" to petition for certiorari herein), was omitted from our brief, and it is our purpose to discuss this question by way of addenda to our brief.

IT WAS NOT THE PURPOSE OF THE ACT OF 1873 TO RATIFY TITLE TO ANY LAND PATENTED TO PEARL RIVER IMPROVEMENT & NAVIGATION COMPANY, UNDER ANY CIRCUMSTANCE, UNLESS AND UNTIL TWENTY-FIVE CENTS PER ACRE THEREFOR HAD BEEN PAID INTO THE STATE TREASURY.

By reference to this legislative act, it is perfectly manifest that its purpose was two-fold: (a) to relieve the Pearl River Improvement & Navigation Company from its obligation, under the Act of April 8, 1871 (set out at pages 30 to 34 of petition for certiorari herein), to improve Pearl River; and (b) to secure instead the payment into the State Treasury of the value of the land (twenty-five cents per acre), or in default thereof title to the land itself was to rest absolute in the State, to the end that the State might carry out the purpose of the grant.

By reference to our brief, and to the exhibit thereto filed herein, it has been made to appear that at the date of the enactment of said Act of 1873 the Pearl River Improvement & Navigation Company owned none of the lands patented to it under the Act of April 8, 1871; but had prior thereto, in November, 1872, conveyed to M. S. Baldwin all of the more than 100,000 acres patented to it. So that if section 6 of the Act of 1873 is to be given the interpretation claimed by counsel for petitioners, there are no lands left upon which the remaining five sections of said Act of 1873 can operate or be given effect. This contention puts the legislature in the anomalous position of trying with one hand to recover these lands, or their supposed value of 25 cents per acre, and with the other hand making a gracious gift of the lands to Baldwin; and loses sight of the fact

that the main purpose of the Act of 1873 was to relieve the Improvement Company from making the improvements on Pearl River and to secure payment into the State Treasury of 25 cents per acre for the lands, or in default thereof the lands themselves, to the end that the State might carry out the purpose of the grant. Not only this, but the contention entirely defeats the manifest intention of the legislature and the whole purpose of the Act.

The court will give effect to the legislative intent. As said in *Platt vs. Union P. R. Co.*, 99 U. S., 48, 25 L. Ed., 424, at middle page 59 of 99 U. S.:

"We are seeking for the intention of Congress, and to discover that we may look at the paramount object which Congress had in view, as well as the means by which it proposed to accomplish that object."

Wherever the words of a statute are ambiguous, or the meaning doubtful, the established rule of construction is that the intention must be deduced from the whole statute, and every part of it. 1 Kent's Com., 462; *Rice vs. Minnesota & N. W. R. Co.*; 1 Black., 358; 17 L. Ed., 147. (See page 378 of 1 Black., near bottom page.)

General language used in a statute should receive such a limited construction as will accord with the legislative intention as gathered from the provisions of the whole act. *McKee vs. United States*, 164 U. S., 287; 17 Sup. Ct. Rep., 92; 41 L. Ed., 437. (See middle page 293, 164 U. S.).

In cases admitting of doubt the intention of the lawmakers is to be sought in the entire context of the section, statute, or series of statutes *in pari materia*. *Atkins vs. Fiber Disintegrating Co.*, 18 Wall., 272; 21 L. Ed., 841. (See last paragraph page 301, through first paragraph page 302 of

18 Wall.) See also to same effect *Peck vs. Jenness*, 7 How., 612; 12 L. Ed., 841.

If a literal interpretation of any part would operate unjustly, or absurdly, or contrary to the meaning of the act, it should be rejected. The construction must be such that the whole can stand if possible. *Heydenfeldt vs. Doney Gold & S. Min. Co.*, 93 U. S., 634; 23 L. Ed., 995. (See first paragraph near top page 638 of 93 U. S.)

The intention of the legislature, when properly ascertained, must govern in the construction of every statute, and single sentences and single provisions are not to be selected and construed by themselves, but the whole statute must be examined and all its provisions construed together. *Pollard vs. Bailey*, 20 Wall., 520; 22 L. Ed., 376 (see last paragraph, page 525, of 20 Wall.); *United States vs. Baisdore*, 8 How., 113; 12 L. Ed., 1009. (See first part of last paragraph, page 122, of 8 How.); *Goyler vs. Wilder*, 10 How., 477; 13 L. Ed., 504. (See fourth and fifth paragraphs, page 496, of 10 How.); *Brown vs. Duchesne*, 19 How., 183; 15 L. Ed., 595. (See last paragraph, page 194, and first paragraph, page 195, of 19 How.)

Statutes should be interpreted according to the intent and meaning of the legislature; and when words or phrases, if taken literally, would be inconsistent and repugnant, they should receive a liberal interpretation, considering the causes and necessity of the statute, and be made to harmonize, repugnancy avoided and inconsistencies reconciled, unless it appears that the difficulty cannot be overcome without doing violence to the language of the lawmakers. *New Lamp Chimney Co. vs. Ansonia Brass & Copper Co.*, 91 U. S., 656; 23 L. Ed., 336. (See last paragraph, page 662, of 91 U. S.)

As stated above, if section 6 of the Act of 1873 is to be

interpreted as ratifying the deed to Baldwin and confirming title in him to the land, then there is no land left upon which the first five sections of the act are to operate, and the manifest purpose of the legislation is defeated. To give to section 6 of the act the meaning contended for by petitioners is to render it repugnant to the remainder of the act, and is to nullify the remainder of the act, and defeat its manifest purpose. However, it is not necessary that the word "deeds" used in section 6 of the act, the use of which is the basis of the contention of petitioners, should be construed as being synonymous with "conveyances." Many instruments are known to the law as "deeds" which are not "conveyances." But even if it was used in the sense of "conveyances," effect can be given to it without at the same time defeating and destroying the whole scheme and purpose of the law. It will be remembered that by section 1 of the Act of April 8, 1871, incorporating Pearl River Improvement & Navigation Company, that company was empowered to hold real estate, which might be acquired by gift, grant or purchase, and to lease, sell, mortgage, grant, alien and convey the same, with the same privileges as a private individual; and that by section 3 of said act, it was empowered to build sawmills, gristmills, warehouses, tenement houses, storehouses, cotton gins, and such other buildings, factories, and improvements as it might deem advisable. These powers were conferred upon, and to be exercised by, the Improvement Company in its capacity as a private corporation, and are wholly separate and distinct from its powers and duties regarding the improvement of Pearl River and the public lands which it was authorized to acquire under the donation for that purpose. There is nothing in the record to show what lands were acquired and

mortgaged or sold by the corporation in its private capacity, and in and about the erection and operation of mills, factories, etc. But it had the power to acquire and mortgage or sell lands, *altogether aside from the public lands in controversy*, and the word "deeds" used in section 6 of the Act of 1873 might well have reference to lands acquired and sold or mortgaged by the company in its private capacity, thus giving something upon which section 6 is made to operate and at the same time leaving the public lands provided to be donated to the company for the purpose of improving Pearl River upon which the remaining five sections of the act is made to operate; and thus, the statute is construed harmoniously in all its parts, and the manifest intention of the legislature as expressed in the first five sections of the statute is given effect.

In construing the statute, consideration must be given to the purpose for which these lands were donated to the State by the Act of Congress, commonly called the "Swamp Land Act"; also to the purpose manifested by the Act of April 8, 1871, creating Pearl River Improvement & Navigation Company, which was for the improvement of the navigation of Pearl River; also to the fact that it clearly appears from reading the Act of 1873 that the legislature realized the company had failed to make the improvements contemplated by the Act of 1871; and, finally, that the obvious purpose of the legislature, in view of the failure of the company to make the improvements or devote the proceeds of the lands to the improvements contemplated both by the grant of Congress to the State and the grant of the State to the company, was either to secure from the company payment into the State treasury of 25 cents per acre for the land or to repossess the land itself, to the end that the State might devote the lands or the proceeds thereof to the object of the

donation. Good faith by the State with the Government, and good faith by the company with the State required nothing short of this.

As we have shown, the company conveyed to Baldwin in November, 1872, all of the more than 100,000 acres donated to the company by the Act of April 8, 1871. And it is shown by the agreed statement of facts in the case at bar (R., 69, paragraph 9) that great quantities of these lands have been repatented by the State to divers persons. So that, the effect of holding that section 6 of the Act of 1873 ratified title to these lands in Baldwin will not only endanger and sacrifice great public interests by defeating the purpose of Congress in making the donation, and by defeating the purpose of the State in originally donating the lands to the Improvement Company, but will jeopardize both the public interest and the public good by divesting the citizens of the State and the holders of these lands under second patents of their title thereto, thus subjecting the citizens to disastrous and harrassing litigation over titles thought to be held secure under these second patents for half a century, and subjecting the State itself to liability for repayment to its second patentees of the purchase price of the lands.

As said by this Court in *Bird vs. United States*, 187 U. S., 118; 23 Sup. Ct. Rep., 42; 47 L. Ed., 100 (see last three lines of first paragraph page 124 of 187 U. S.):

"There is a presumption against a construction which would render a statute ineffective or inefficient, or which would cause grave public injury or inconvenience."

And, also, as said by the Supreme Court of Delaware in the case of *Pickering vs. Day*, 3 Houston (Del.), 474, 95 Am. Dec., 291:

"Where the language of a statute is not clear, and it is obvious that by a particular construction grave public interests would be endangered or sacrificed, the court ought not to presume that such construction was intended by the makers of the law."

When section 6 of the Act of 1873 is read in connection with the facts as they existed at that time and in the light of the clear language and manifest purpose of the other five sections of the Act, that is to say, either to secure payment into the treasury of 25 cents per acre for the lands or in default thereof the lands themselves, to the end that the State itself might carry out the purpose of the grant, it certainly cannot be said that section 6 of the Act *clearly means* what counsel for petitioners contend that it means, that is, that title was divested thereby out of the State and vested in Baldwin without the payment of the 25 cents per acre.

We respectfully submit, therefore, that the Court is not called upon, even if this question were otherwise open to consideration by the Court under the State of the record in the case at bar, to sacrifice the true intent and purpose of the legislature as gathered from the first five sections of the Act of 1873, by giving effect to section 6 thereof as contended for by petitioners, and thereby to endanger and jeopardize great public interests.

Respectfully submitted,

WILLIAM H. WATKINS,
FLEET C. HATHORN,
HATHORN & WILLIAMS,

Attorneys for Respondents.

EDWARD HINES YELLOW PINE TRUSTEES *v.*
ANNA F. C. MARTIN ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT.

No. 363. Argued May 1, 1925.—Decided May 25, 1925.

1. Where a construction of a state statute affecting title to real estate has been repeatedly determined by decisions of the state courts and thus established as a rule of property in the State, the federal courts will follow those decisions without inquiring into the justice and sufficiency of the rule as an original proposition. P. 462.
2. Petitioners claimed title to land in Mississippi under a patent issued to a corporation under an act of the state legislature incorporating it and providing that the corporation should, within 60 days after the passage of the act, file with the Secretary of State a bond in a specified amount "with two or more good securities," and that, upon approval and filing of the bond, patents should be issued, upon demand of the company, signed by the Governor and countersigned by the Secretary of State. The State Supreme Court having repeatedly decided that a patent so issued was void because the bond filed and approved was executed by individuals only and not by the corporation and was therefore not a compliance with the statute, *held* that the rule thus established should be followed in a case arising in the federal court. P. 457.

296 Fed. 442, affirmed.

CERTIORARI to a decree of the Circuit Court of Appeals which affirmed a decree rendered by the District Court for the respondents in consolidated suits to quiet title brought by the petitioners.

Mr. T. J. Wills, with whom *Mr. T. W. Davis* was on the briefs, for petitioners.

Mr. Fleet C. Hathorn, with whom *Messrs. William H. Watkins* and *Clayton D. Potter* were on the briefs, for respondents.

Mr. JUSTICE STONE delivered the opinion of the Court.

Petitioners, complainants below, filed four bills in equity in the United States District Court for the Southern District of Mississippi against four different defendants to remove cloud on title of four plots of land separately described in the several bills. The suits thus brought were consolidated and tried by the District Court as one, upon an agreed statement of facts and documentary evidence, and a decree was rendered adjudging that the title to the lands in question was in defendants and denying the prayer of the bill. On appeal to the Circuit Court of Appeals, the decree was affirmed. 296 Fed. 442.

The lands in question were acquired by the State of Mississippi from the United States under Act of Congress approved September 28, 1850. Petitioners' title depends upon the validity of a patent issued June 27, 1871, by the State of Mississippi to the Pearl River Improvement & Navigation Company, a corporation from which petitioners derived their title by mesne conveyances. The title set up by the defendants was acquired by mesne conveyances under a second patent describing the same lands, issued by the State of Mississippi to Mitchell, December 7, 1883. The Mississippi Legislature, by Act approved April 8, 1871, incorporated the Pearl River Improvement & Navigation Company and provided that that company

should "within sixty days after the passage of this Act, file in the office of the Secretary of State a bond in the sum of \$50,000, with two or more good securities," and that upon the approval and filing of the bond, "the said Secretary of State shall from time to time as demanded by said company make out a patent or patents which shall be signed by the Governor and countersigned by the Secretary of State, which patents shall vest the fee simple in said lands in this company." Within sixty days, the company filed a bond, executed by four individuals only, in the sum specified, and conditioned on the performance by the company of all duties imposed on it by the Act of April 8, 1871. The bond was approved by the Governor, and the patent of June 27, 1871, describing the lands referred to in that statute, including the lands involved in this litigation, was issued, signed by the Governor and countersigned by the Secretary of State.

The validity of petitioner's title depends upon the determination of the question whether the bond filed by the company was a compliance with the provisions of the statute so as to render operative the patent issued by the officials of the State to the company as a valid conveyance of the fee of the lands in question. Whether or not the bond was a compliance with the statute and the legal effect of the patent so far as other lands embraced within its description are concerned, are points which have been several times passed upon by the state courts of Mississippi and, once before the present litigation, were considered by the United States Circuit Court of Appeals for the Fifth Circuit.

In *Hardy v. Hartman*, 65 Miss. 504 (1888), which was an action of ejectment, the court, although referring to the fact that it did not appear from the record that any patent signed by the Governor and countersigned by the Secretary of State was ever issued to the company for the land in question, nevertheless rested its decision on its

holding that the Act of April 8, 1871, required, as a condition precedent to the validity of any patent issued pursuant to it, that the company should file in the office of the Secretary of State its own bond in the amount specified; that by filing a bond executed by individuals it had not complied with the condition and the patent was accordingly void.

In *Southern Pine Co. v. Hall*, 105 Fed. 84, decided in 1900, suit was brought as in the present case, to quiet the title of a plaintiff claiming under the company. In that case the Circuit Court of Appeals for the Fifth Circuit held that the true meaning of the statute, confirmed by the contemporary construction of it on the part of the Governor and the Secretary of State by their action in issuing the patent, was that the company should file a bond in the specified amount insuring an indemnity to the State in that amount. Having complied with the requirements of the statute by filing the approved bond of four solvent individuals, residents of the State, the patent issued to the company by the State of Mississippi was held to be valid and to pass a fee to the patentee.

In *Becker v. Columbia Bank*, 112 Miss. 819, decided in 1917, which was also a suit to quiet title of lands claimed under the patent of 1871, the Supreme Court of Mississippi reaffirmed the principle of its decision in *Hardy v. Hartman*, *supra*, saying that that "decision established a rule of property which should not now be disturbed" and that the failure to comply with the requirements of the statute as interpreted in *Hardy v. Hartman*, *supra*, rendered the purported patent to the company void and that the patentee took no title under it.

In *Edward Hines Yellow Pine Trustees v. State ex rel. Moore* (1924), 134 Miss. 533, the Supreme Court of Mississippi again affirmed and adopted the view laid down in *Hardy v. Hartman*, *supra*, saying at p. 534:

"We are not here concerned with the correctness of the decision in *Hardy v. Hartman*, *supra*, and the rule there

applied, whether correct or not, to titles derived through patents issued to the Pearl River Improvement & Navigation Company has become a rule of property and will not now be departed from."

The validity of titles derived under the same patent to the company appears to have been upheld in the case of *Hines et al., Trustees v. Martin* by the Supreme Court of Mississippi, decided without opinion February 4, 1924. 99 So. Rep. 825.

In all these cases the question ruled upon was whether the bond filed by the company complied with the requirements of the statute and whether the filing of a bond satisfying those requirements was a condition precedent to the execution of the patent and the vesting of title in the patentee. An answer to these questions involved an interpretation of the state statute and the application of it, as interpreted, as a rule of property determinative of rights in titles to land within the State. Both the meaning of statutes of a State and the rules of the unwritten law of a State affecting property within the State are peculiarly questions of local law to be ascertained and established by the state courts. For that reason federal courts ordinarily hold themselves bound by the interpretation of state statutes by the state courts. *Walker v. State Harbor Commissioners*, 17 Wall. 648; *Barrett v. Holmes*, 102 U. S. 651; *Greekie v. Kirby Carpenter Co.*, 106 U. S. 379, 385; *McArthur v. Scott*, 113 U. S. 340; *Schley v. Pullman Car Co.*, 120 U. S. 575, 580; *Bucher v. Cheshire Railroad Co.*, 125 U. S. 555; *Ridings v. Johnson*, 128 U. S. 212, 224; *Heath v. Wallace*, 138 U. S. 573; *Bauserman v. Blunt*, 147 U. S. 647; *Balkam v. Woodstock Iron Co.*, 154 U. S. 177; *American Land Co. v. Zeiss*, 219 U. S. 47; *Quong Ham Wah Co. v. Industrial Accident Commission*, 255 U. S. 445; *North Laramie Land Co. v. Hoffman*, ante, p. 276; and follow rules of property declared by state courts; *Jackson ex dem St. John v. Chew*,

12 Wheat. 153; *Suydam v. Williamson*, 24 How. 427; *Williams v. Kirtland*, 13 Wall. 306; *League v. Egery*, 24 How. 264; *Smith Purifier v. McGroarty*, 136 U. S. 237; *Warburton v. White*, 176 U. S. 484.

When questions affected by the interpretation of a state statute or a local rule of property, arise in a federal court, that court has the same authority and duty to decide them as it has to decide any other questions which arise in a cause, and where state decisions are in conflict or do not clearly establish what the local law is, the federal court may exercise an independent judgment and determine the law of the case. See *Pease v. Peck*, 18 How. 595, 598; *Burgess v. Seligman*, 107 U. S. 20; *Barber v. Pittsburgh, etc., Railway*, 166 U. S. 83, 99; *Kuhn v. Fairmont Coal Company*, 215 U. S. 349. This Court has refused to follow a rule established only by single state decision, rendered after the rights involved in the case in the federal court accrued, *Kuhn v. Fairmont Coal Co., supra*, or a single decision when not satisfied that it is conclusive evidence of the state law. *Barber v. Pittsburgh, etc., Railway Co.*, 166 U. S. 83, 99. In *Burgess v. Seligman, supra*, this Court refused to follow decisions of the state court conflicting with a previous decision of the United States Circuit Court, in that case, with respect to the interpretation of a state statute, fixing the liability of stockholders of a corporation organized under the laws of the State as applied to a stockholder who was a non-resident of the State and who acquired his interest in the stock outside of the State. But where the rule is one affecting title to real estate within the State and has been repeatedly determined by decisions of state courts so that it is established as the law of the State, there has been no departure from the rule that the federal courts will follow the decisions of the state courts. *Jackson ex dem St. John v. Chew, supra*; *Green v. Neal*, 6 Pet., 291; *Suydam*

v. *Williamson*, 24 How., 427; *Walker v. The State Harbor Commission*, 17 Wall. 648; *Barrett v. Holmes*, 102 U. S. 651. And this is the rule even though the state rule is not approved. *Walker v. The State Harbor Commissioner*, *supra*; *Bucher v. Cheshire Railway Co.*, 125 U. S. 555; *Balkam v. Woodstock Iron Co.*, 154 U. S. 177. To avoid the uncertainty and injustice which result from "the discordant element of a substantial right and which is protected in one set of courts and denied in the other, with no superior to decide which is right" (*Brine v. Insurance Company*, 96 U. S. 627), this Court has not hesitated, when there has been a conflict of decision between it and the state courts affecting a rule of property within the State, to overrule its own decisions and to follow the state decisions, once it has become evident that they have established a "rule of property" as the settled law of the State. *Green v. Lessee of Neal*, 6 Pet. 291; *Suydam v. Williamson*, *supra*; *Fairfield v. County of Gallatin*, 100 U. S. 47; *Roberts v. Lewis*, 153 U. S. 367, 376. And see *Bauserman v. Blunt*, *supra*, overruling a decision of the Circuit Court antedating a conflicting decision of the state court. We are, therefore, constrained in the present case to accept the view of the state courts as announced by them without inquiring, as an original proposition, into the justice and sufficiency of the rule which we follow.

In the argument before this Court, petitioners relied upon the effect of c. 118 of the Laws of Mississippi of 1873 as validating his title. This was a private act of the legislature of Mississippi which relieved the Pearl River Improvement & Navigation Company from some of its obligations under the Act of April 7, 1871, upon certain payments to be made by it to the state treasury, and provided that "all acts, deeds and proceedings whatever of the Pearl River Improvement & Navigation Company be and the same are hereby legalized, ratified and confirmed."

This appears to be the first occasion in the course of this litigation on which the existence of this statute and the claim of right under it by the petitioners, have been brought to the attention of the court, although it appears to have been before the state court, but not commented on, in *Becker v. Columbia Bank*, *supra* and *Hines Yellow Pine Trustee v. Martin*, *supra*. It is not referred to in the record here. By the agreed statement of facts the Act of April 8, 1871, and the patent issued to the Company are the only suggested source of title in the petitioners. No reference is made to the Act of 1873 in the assignments of error. The record gives no information as to the existing situation at the time it was passed; as to what lands had been conveyed by the Company or what lands retained. We are left uninformed as to whether the Company made the payments stipulated for in the statute. This Court is a court of review and it will not consider questions not raised or disclosed by the record brought to it for a review and which were not considered by the courts below. *McClellan v. Carland*, 217 U. S. 268, 283; *Bass, etc., Ltd. v. Tax Commission*, 266 U. S. 271, 285. And see *Davis v. Currie*, 266 U. S. 182 and *United States Fidelity & Guaranty Co. v. Woolridge*, *ante* p. 234.

In these circumstances, the petitioners can not be heard to claim anything in these cases under the Act of 1873, and beyond this, we decide nothing in respect to it.

Judgment of the Circuit Court of Appeals is

Affirmed.